

LATHAM & WATKINS LLP

November 28, 2012

VIA E-MAIL & CERTIFIED MAIL

Thomas A. Benson
Trial Attorney
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Mr. Craig Melodia
Associate Regional Counsel
U.S. Environmental Protection Agency - Region 5
77 West Jackson Boulevard (C-14-J)
Chicago, IL 60604-3590

Re: Ashland Site – Railroad Settlement

Dear Messrs. Benson & Melodia:

On behalf of Northern States Power Company, a Wisconsin corporation ("NSPW"), this letter sets forth NSPW's current position on potential settlement discussions between EPA and Soo Line Railroad Company and Wisconsin Central Ltd. (collectively, the "Railroads"), and the City of Ashland, Wisconsin (the "City"), regarding liability at the Ashland Lakefront Superfund Site (the "Site"). As set forth more fully below, NSPW believes that the liability of the Railroads under CERCLA goes well beyond passive ownership of portions of the Site, and that the City is substantially responsible for the condition of the Site. Although both the Railroads and the City claim *de minimus* or *de micromis* status, any such characterization completely ignores the plethora of evidence regarding extensive dumping, disposal, mobilization, exacerbation of site conditions, and other significant contribution to both the levels and location of contaminants found at the Site.

The purpose of this letter is not to reargue facts of which EPA is aware. The evidence presented against the Railroads and the City in NSPW's PRP investigation report, allocation analysis, and many of the other record documents demonstrates the clear and significant liability of these parties. This letter instead focuses below on more recent evidence uncovered during NSPW's site investigation activities and otherwise helps to synthesize available information. In addition to the information set forth herein, we have attached the Complaint (**Ex. 1**) filed by NSPW against the Railroads and the City, as well as a number of "new" documents for your

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consideration, including several documents from our review of historic records at the Site. Our investigation is ongoing, and discovery in the contribution litigation is about to begin, but even the preliminary information we have now strongly connects the City and the Railroads to the contamination at the Site.

EPA Should Not Accept any De Minimis Settlement Offer from any of the Other PRPs

As we have previously communicated, NSPW does not believe that a settlement between EPA and/or the Wisconsin Department of Natural Resources ("WDNR") (collectively the "Agencies") and the Railroads or City is fair or appropriate unless it is for a significant share of Site-wide cleanup costs, includes recognition of the PRPs allocation of the orphan share at the Site, and does not undermine NSPW's contribution claims against those other PRPs. In particular:

1. ***The other PRPs have significant responsibility for site conditions.*** We urge the Agencies to consider *all* factual information we have provided, including the information summarized below, before entertaining any settlement offer from either the Railroads or the City, and to evaluate its own litigation risk if divisibility defenses are ultimately raised regarding this Site.
2. ***The Agencies should not reward the other PRPs recalcitrance.*** NSPW is the only party who has, to date, cooperated or performed any work at the Site, has worked diligently and in good faith to resolve its own liability and, most importantly, has moved the Site into to cleanup mode. By contrast, to date, the City and Railroads have stalled, denied, stalled again, cancelled meetings at the last minute, and created unnecessary access issues. The Agencies should not accept a *de minimis* settlement offer from the Railroads or City which would reward their recalcitrance.
3. ***The Agencies should not jeopardize settlement negotiations with NSPW regarding the sediments.*** As you know, the recent settlement offers made by NSPW at our meeting of October 15, 2012, were conditioned upon a number factors, one of which was the preservation of NSPW's right of contribution against the Railroads and the City. As we shift our attention to negotiations for the sediment portion of the Site, a settlement with any of the *other* PRPs which directly undermines NSPW's contribution rights would severely undermine the good will established between the Agencies and NSPW to date, and it could derail sediment negotiations altogether. NSPW would consider any such settlement to be patently unfair and a clear breach of the cooperative relationship developed between the Agencies and NSPW.
4. ***Global settlement negotiations should be attempted before any settlement offer from the Railroads or City is accepted.*** We respectfully request that the Agencies invite NSPW to participate in any settlement negotiations with the other PRPs to determine whether a global settlement may be possible, and to otherwise refrain from settling with any PRP at the Site to the extent it may jeopardize settlement negotiations with NSPW.

While NSPW recognizes the Agencies' duty to consider any settlement offer by a PRP in an effort to avoid litigation, the larger objective of Site cleanup must prevail. Respectfully, we believe that any decision to jeopardize Site cleanup in order to obtain minimal settlements from recalcitrants would be an egregious error. NSPW cannot accept that, and we will vigorously contest any such settlement as contrary to judicially-recognized principles of CERCLA allocation. *See, e.g., Burlington Northern v. U.S.*, 129 S.Ct. 1870 (2009).

The Railroads

Importantly, with respect to the record of evidence demonstrating the CERCLA liability of the Railroads, there is more than sufficient credible evidence establishing the Railroads as a *source* of Site-wide contamination, and not simply "passive" owners as the Railroads now claim. For example:

- Eyewitness testimony exists regarding the Railroads' dumping, leaking tank cars, and other operational activities which contributed to contamination at the Site. For instance, multiple eyewitnesses have sworn under oath that, *inter alia*, the Railroads drained "oil" and dumped "tar waste" in Kreher Park. *See* Sept. 1995 Affidavit of M. Kabasa; *see also* Sept. 1995 Affidavit of J. Walters.
- Additional information recently obtained by NSPW demonstrates the Railroads' historic ownership of the "Commercial Dock" located on the western portion of the Ashland Site. *See* H.R. Doc. No. 337, at 8 (1941) (noting dock "at the foot of Ellis Avenue" is owned by Soo Line and was built in 1873 by Soo Line's predecessors) (**Ex. 2**); *see also* 1895, 1923 & 1946 Sanborn Maps (noting Soo Line predecessor as owner) (**Ex. 3**).
- U.S. Coast and Geodetic Survey maps of Chequamegon Bay clearly show historic *dredging* activities along the Commercial Dock within the Site's Bay inlet during the period of the Railroads' ownership. *See* **Exs. 4** and **5** (1909 and 1923 U.S. Corps of Engineers survey maps). Accordingly, it now appears the Railroads directly engaged in or authorized dredging activities within the Site boundaries, which also would have caused or contributed to contamination or otherwise exacerbated Site conditions. Such activities directly connect the Railroads to the sediment cleanup.
- Additional historic materials establish a clear connection between the Railroads and the Site, including an operational connection with the orphaned John Schroeder Lumber Company. *See* **Exs. 6** and **7** (invoices for purchased lumber and a proposal for railroad ties); *see also* **Ex. 8** (new photos showing extensive operations of Schroeder Lumber).

The City

With respect to the City, we believe that a review of the Site records suggests that the City engaged in conduct or knowingly permitted activities at the Site which led to and exacerbated contamination conditions, including mobilization of contaminants from the on-land areas of the Site to the sediments. As we have alleged in our Complaint, and as the facts clearly demonstrate, the City's contamination activities trace back to the 1800's, and continue through at least the late 1990's, including without limitation:

- As the City has admitted, during the 1800's and early 1900's, the City regularly disposed of, and permitted the disposal of, industrial and municipal wastes directly into Chequamegon Bay and the ravines that feed into the Bay.
- The City has owned portions of Kreher Park since at least 1942, including various facilities where it is undisputed that releases have occurred, including during the period where dumping occurred to reclaim the lakebed in a portion of Kreher Park.
- The City acquired the Schroeder Lumber property in 1942 and thereafter exercised dominion and control over that portion of the Site.
- The City owned and operated and controlled the subsurface structures, sewers, and related ditches and drainage features, which NSPW believes conveyed hazardous substances into the Site. For instance, engineering drawings by the City's own contractors clearly depict the planned construction of pipes to drain the misnamed "coal tar dump" during the City's 1951 construction of the wastewater treatment plant ("WWTP"). That significant Site feature disappeared in the years after the City built the WWTP, but not unsurprisingly, some of the highest contaminant levels are found in the exact area where the City's pipes were to drain into the Bay. *See Exs. 9, 10, 11 & 12* (Greely & Hansen drawings from 1952 & 1971; Aerial Photos from 1951 & 1966).
- The City built the WWTP in 1951 and expanded it in 1973, and by its own admission, disturbed and disposed of contaminants during the WWTP construction and expansion. NSPW is informed and believes that the City and its contractors encountered wood debris, wood treatment chemicals, and other materials during the construction and expansion of the WWTP, and that large quantities of these materials were mobilized through their excavation and redisposal at the Ashland Facility. Documents and testimony from the City's own contractors indicate that the City and its contractors encountered (during both the construction and expansion of the WWTP) sizeable volumes of COC-impacted soil and groundwater, the latter of which they pumped directly to Chequamegon Bay without treatment. In fact, during expansion of the WWTP, City documents show untreated COC-impacted groundwater was released to the Bay 24 hours a day for at least 89 straight days.
- Despite the City's awareness of Site contamination, as late as 1997, WDNR had to issue the City a "notice of violation" for the City's continued dumping of COC-impacted, untreated groundwater that collected in the basement of the City's WWTP.

We urge the Agencies to review and consider the factual information we have provided, and NSPW will continue to supplement this information as we uncover it going forward. We believe the information is clear and compelling, and that it demonstrates the significant liability of both the Railroads and the City at the Site.

Global Settlement - Fair Allocation Depends on Settlement Framework At Issue

As we have said on numerous occasions, NSPW stands ready to meet with the Agencies and the other PRPs at any time to discuss settlement. We encourage the Agencies to convene such a meeting and thereafter act as a neutral to encourage serious settlement discussions. In the event those discussions fail, NSPW supports retaining a neutral mediator to convene additional settlement negotiations.

However, any settlement must be fair and appropriate, and in order for NSPW to adequately make an assessment of what is fair and appropriate, several threshold questions must be addressed first. For example:

1. Are the PRPs going to settle on a percentage "pay as you go" allocation of the costs? If yes, upon what percentage?
2. Or, are the PRPs going to cashout for a sum certain now and if so, are some or all of the PRPs going to cashout now? At what amount(s)?
3. What remedy will be implemented at the Site? The ROD itself indicates that the hybrid remedy or a full-scale wet dredge are possible remedies for the Site. In addition, NSPW has made clear that it will not perform the hybrid remedy due primarily to safety and environmental concerns, but is willing to cashout for the amount previously offered on October 15, 2012. NSPW has also indicated it would be willing to perform other alternatives such as a Confined Disposal Facility, which is a safer, more environmentally sound, and cost effective remedy for the site that also supports the local community's goals for redevelopment.
4. How will the orphan share be allocated or otherwise addressed? Does EPA intend to provide orphan share funding, or funding from Great Lakes Restoration funds to offset the orphan share?
5. How will past costs incurred by NSPW and EPA, and NRD incurred by NSPW, be addressed in any settlement with the other PRPs?
6. Will contribution protection be provided or not for any partial settlement with the other PRPs?

NSPW appreciates the Agencies' consideration of the information we have provided. NSPW and the Agencies have made significant progress at the Site, and resolution of the sediment portion of the Site is now our collective goal. We encourage the Agencies to convene

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global settlement discussions among the parties. NSPW stands ready and willing to enter those discussions and will participate in good faith to achieve a fair and appropriate settlement.

If you have any questions or require more information, please do not hesitate to contact us. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Karg', with a stylized flourish extending from the end.

Karl A. Karg
of Latham & Watkins, LLP

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

NORTHERN STATES POWER COMPANY,
a Wisconsin corporation,

Plaintiff,

v.

THE CITY OF ASHLAND, WISCONSIN;
SOO LINE RAILROAD COMPANY;
and WISCONSIN CENTRAL, LTD.,

Defendants.

Case No. 12-cv-602

COMPLAINT

Plaintiff Northern States Power Company, a Wisconsin corporation ("NSPW"),
by its undersigned counsel, hereby alleges as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to federal and state law, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601 *et seq.* ("CERCLA" also known as "Superfund"), relating to an environmental cleanup proceeding in Ashland, Wisconsin.

2. The environmental cleanup addresses contamination at the Ashland/Northern States Power Lakefront Site, located along the shore of Chequamegon Bay, Lake Superior, in Ashland, Ashland County, Wisconsin. The Ashland/Northern States Power Lakefront Site is bordered by U.S. Highway 2 to the south, Prentice Avenue to the east, Ellis Avenue to the west, and Lake Superior's Chequamegon Bay to the north ("Ashland Site"). The Ashland Site consists

of approximately 40 acres and has been divided by the United States Environmental Protection Agency ("EPA") into four areas of concern: (a) Chequamegon Bay; (b) soils and shallow groundwater in Kreher Park; (c) soils and shallow groundwater in the Upper Bluff/Filled Ravine; and (d) deep groundwater in the Copper Falls Aquifer underlying the Upper Bluff. *See* Illustrative Site Map (Ex. 1 hereto). This action involves NSPW's claims for past and future response costs incurred in connection with the Chequamegon Bay and Kreher Park areas (referred to herein as the "Ashland Facility") and natural resource damages associated with the Ashland Site. NSPW does not seek the recovery of response costs or damages in this action for the cleanup of the Upper Bluff/Filled Ravine or the deep groundwater in the Copper Falls Aquifer underlying the Upper Bluff at this time.

3. NSPW, a Wisconsin public utility, is a current owner of a small portion of property within the Ashland Site on which, from 1885 to 1947, a manufactured gas plant ("MGP") that provided gas to the Ashland community was located. The MGP was located within the area known as the Upper Bluff/Filled Ravine area of the Ashland Site. NSPW never owned nor operated the MGP itself, but acquired the property on which the MGP was located in 1986 from a former public utility, Lake Superior District Power Company. Lake Superior District Power Company had owned the MGP since approximately 1922, when it purchased the plant from Ashland Light Power & Street Railway Company, who itself had acquired the MGP from earlier owners. The MGP ceased operations in 1947, decades before NSPW acquired the property. Since NSPW acquired the MGP property, it has utilized the former MGP property as an equipment, repair and storage facility.

4. Commercial, municipal and industrial activities have been conducted at and adjacent to the Ashland Site from at least the late 1800s. Based on investigations conducted

from 1991 to the present, the EPA and the Wisconsin Department of Natural Resources (“WDNR”) (collectively, the “Agencies”) have determined that the Ashland Site is contaminated by, *inter alia*, polycyclic aromatic hydrocarbons (“PAHs”) and volatile organic compounds (“VOCs”), including without limitation, concentrations of PAHs in the form of tars and oils, commonly referred to as nonaqueous phase liquids (“NAPL”), as well as metals and pesticides and their components (collectively, “Contaminants of Concern” or the “COCs”).

5. Under the Agencies’ oversight, NSPW has undertaken extensive investigatory, remedial, and other activities at the entire Ashland Site (not just the portion NSPW currently owns) consistent with the National Contingency Plan, including without limitation, the performance of a Remedial Investigation and Feasibility Study (“RI/FS”), soil, groundwater and sediment sampling, ecological and human health risk assessments, environmental forensic investigations, site characterizations, historic potentially responsible party (“PRP”) investigations, and interim removal actions.

6. NSPW entered into an Administrative Order on Consent (“AOC”) with EPA on November 16, 2003, to perform the RI/FS under EPA’s oversight. *See* CERCLA Docket No. V-W-04-C-764 (Nov. 16, 2003) (Ex. 2 hereto). The objectives of the RI/FS were to determine the nature and extent of contamination and any threat to human health at the Ashland Site, to determine and evaluate alternatives for remedial action at the site, and to collect data for developing and evaluating remedial alternatives. NSPW completed the RI/FS in 2008, and EPA issued a notice of completion for the AOC in 2010.

7. EPA’s decision on the remedial action to be implemented at the Ashland Site is embodied in a final Record of Decision (“ROD”), executed on September 30, 2010, on which the State of Wisconsin gave its concurrence.

8. NSPW has entered into a Consent Decree with the United States and the State of Wisconsin lodged with this Court on August 8, 2012. *See* Case No. 12-cv-00565, Complaint (Dkt. No. 1) and Consent Decree Between the United States, Wisconsin, Northern States Power Company, and the Bad River and Red Cliff Bands of the Lake Superior Tribe of Chippewa Indians (Dkt. No. 2) (“2012 Consent Decree”) (Exs. 3 and 4 hereto, attachments omitted). The remedial design and remedial action to be conducted by NSPW pursuant to the 2012 Consent Decree pertains only to the selected remedy specified in the ROD for the on-land portions of the Site (Kreher Park; Upper Bluff/Filled Ravine; and the deep groundwater in the Copper Falls Aquifer), referred to as the “Phase 1 Project Area,” and not to the sediments in Chequamegon Bay. The cost of the cleanup for the Phase 1 Project Area is estimated at \$40 million.

9. Under the 2012 Consent Decree, NSPW also must reimburse the United States for certain future response costs incurred by EPA.

10. Under the 2012 Consent Decree, NSPW also must make substantial payment (in the form of a land conveyance of nearly 1,400 acres) to federal, state and tribal natural resource trustees to resolve all alleged injury to, destruction of, or loss of use or impairment of natural resources associated with the Ashland Site. The Department of Interior (as represented by the U.S. Fish and Wildlife Service) and the Department of Commerce (as represented by the National Oceanic and Atmospheric Administration) have asserted that they are federal trustees for natural resources at or near the Ashland Site. WDNR has asserted that it is a state trustee for natural resources at or near the Ashland Site. The Bad River and Red Cliff Bands of the Lake Superior Tribe of Chippewa Indians (the “Tribes”) have asserted that they are trustees for natural resources at or near the Ashland Site. The U.S. Fish and Wildlife Service, the National Oceanic Atmospheric Administration, WDNR, and the Tribes (collectively, “Trustees”) participated in

the negotiation of the 2012 Consent Decree with respect to natural resource damages and support the 2012 Consent Decree.

11. Per the requirements of 42 U.S.C. § 9622(d)(2), the 2012 Consent Decree has been submitted for public comment. *See* 77 Fed. Reg. 48,541 (Aug. 14, 2012).

12. NSPW will continue to incur response costs as the investigation and cleanup proceeds in the Phase 1 Project Area pursuant to the 2012 Consent Decree, and NSPW may incur response costs in connection with Chequamegon Bay. The investigation and cleanup for both portions of the Ashland Facility are not complete, and substantial work remains to be done.

13. NSPW's cooperative actions to date and obligations pursuant to the 2012 Consent Decree have and will impact the utility's ratebase customers.

14. Although the Agencies have identified other responsible parties who are liable as a result of those parties' operations at and/or ownership of the Ashland Facility, including Defendants the City of Ashland ("City"), the Soo Line Railroad Company (d/b/a Canadian Pacific Railway) ("Soo Line") and Wisconsin Central Ltd. ("Wisconsin Central"), only NSPW has cooperated with the Agencies in taking any significant action to perform work or fund investigation or cleanup efforts at the Ashland Facility.

15. Other responsible parties, such as the John Schroeder Lumber Company who operated at the Ashland Site from approximately 1901 through 1939 ("Schroeder Lumber"), appear to no longer exist or are otherwise defunct and, therefore, represent an "orphan share" at the Ashland Facility.

16. As a result, NSPW (and/or its ratebase customers) have inequitably borne the full burden for addressing the investigation and cleanup of the Ashland Facility to date. NSPW has

incurred well in excess of its fair equitable share of the Ashland Facility's response costs and natural resource damages for the Ashland Site.

17. NSPW brings this lawsuit to: (1) establish the liability of Defendants under federal and state law for the contamination of the Ashland Facility; (2) determine Defendants' equitable shares of the costs of investigating and cleaning up the Ashland Facility, and of the compensation paid to the Trustees for alleged natural resource damages and assessment costs related to the Ashland Site; and (3) require Defendants to pay their fair portion of those costs.

JURISDICTION

18. This Court has jurisdiction over the subject matter of this Complaint pursuant to 42 U.S.C. § 9601 *et seq.* and 28 U.S.C. § 1331. This Court has supplemental jurisdiction over NSPW's state law claims pursuant to 28 U.S.C. § 1367.

19. Venue is proper under 28 U.S.C. § 1391(b) and 42 U.S.C. § 9613(b) because: (a) the events giving rise to the claims asserted herein are based on operations and activities that took place in this District; (b) the Ashland Facility is located entirely within this District; and (c) each of the Defendants is located and/or does or has done business in the District.

20. Venue is also proper pursuant to 28 U.S.C. § 1391(c) because each Defendant is subject to personal jurisdiction in this District.

PARTIES

21. Plaintiff NSPW is a corporation organized and existing under the laws of Wisconsin. NSPW is an operating utility primarily engaged in the generation, transmission, distribution and sale of electricity in portions of northwestern Wisconsin and in the western portion of the Upper Peninsula of Michigan. NSPW provides electric utility service to approximately 251,000 customers and natural gas utility service to approximately 107,000

customers. In the State of Wisconsin, NSPW is regulated by the Public Service Commission of Wisconsin.

22. Defendant THE CITY OF ASHLAND is a Wisconsin municipal corporation organized under the laws of the State of Wisconsin, with its principal place of business located in Ashland, Wisconsin. The City received a Special Notice of Liability Letter from the EPA, dated April 27, 2011, notifying the City of its responsibility for the Ashland Site under CERCLA § 107(a), 42 U.S.C. § 9607(a). The City has owned a large portion of Kreher Park since at least 1942—including various facilities from which releases or disposal of hazardous substances have occurred. The City also has operated in and/or around the Kreher Park portion of the Ashland Site since at least the late 1800s. The City's activities have resulted in the release and/or disposal of hazardous substances at the Ashland Facility.

23. Defendant SOO LINE RAILROAD COMPANY is a Minnesota corporation, doing business in the State of Wisconsin, with its principal place of business in Minneapolis, Minnesota. Upon information and belief, Soo Line is the successor to, among other entities, the Minneapolis, St. Paul and Sault Ste. Marie Railway, the Minneapolis, St. Paul and Sault Ste. Marie Railroad Company, the Wisconsin Central Railway Company, the Wisconsin Central Railroad Company, and the Duluth, South Shore & Atlantic Railroad. Soo Line received a Special Notice of Liability Letter from the EPA, dated April 27, 2011, notifying Soo Line of its responsibility for the Ashland Site under CERCLA § 107(a), 42 U.S.C. § 9607(a). Soo Line and/or its predecessors, owned and/or operated a railroad corridor through the Kreher Park area of the Ashland Site, and other related facilities, from at least the 1870s through 1987, which ownership and operation resulted in the release and/or disposal of hazardous substances at the Ashland Facility.

24. Defendant WISCONSIN CENTRAL LTD. is an Illinois corporation, doing business in the State of Wisconsin, with its principal place of business in Homewood, Illinois. Wisconsin Central received a Special Notice of Liability Letter from the EPA, dated April 27, 2011, notifying Wisconsin Central of its responsibility for the Ashland Site under CERCLA § 107(a), 42 U.S.C. § 9607(a). Wisconsin Central acquired the existing railroad corridor through the Kreher Park area of the Ashland Site, and other related facilities, in 1987 from the Soo Line. Wisconsin Central is a subsidiary of Canadian National Railway.

FACTUAL BACKGROUND

A. The Ashland Site

25. EPA placed the Ashland Site on the National Priorities List in September 2002.

26. The Ashland Site consists of property and other facilities currently owned by the City, Wisconsin Central and NSPW, among others. NSPW's property is on the Upper Bluff/Filled Ravine portion of the Ashland Site. The City and Wisconsin Central own portions of, and other facilities within, Kreher Park.

27. The Kreher Park portion of the Ashland Site consists of approximately 13 acres of man-made, reclaimed ("landfilled") former lakebed. Kreher Park currently consists of a swimming beach, a boat landing, an RV park and adjoining open space east of Prentice Avenue and to the east of the Ashland Site. For purposes of this Complaint, and to be consistent with other Ashland Site documents, the portion of the Ashland Site to the west of Prentice Avenue, east of Ellis Avenue and north of the NSPW property is referred to as "Kreher Park." See Ex. 1. Kreher Park has been used for multiple industrial activities since the late 1800s, including but not limited to the following, all of which, upon information and belief, involved COCs: (a) lumbering, sawmill and wood treating activities; (b) railroad operations including the loading and off-loading of materials; (c) unregulated dumps; (d) sewers; (e) a former ponded area of

wood treatment residuals; (f) a municipal wastewater treatment plant; (g) construction, demolition and filling activities; (h) waste disposal, treatment and transfer; and (i) discharges from municipal sewer systems.

28. From approximately 1901 through 1939, Schroeder Lumber owned and operated a large portion of Kreher Park. The County of Ashland acquired ownership of the former Schroeder property after the demise of Schroeder Lumber. The City purchased the Schroeder property from the County in 1942 and has since exercised dominion and control over the former Schroeder property as well as additional portions of Kreher Park. As alleged below, numerous construction activities and other operations by the City and others have resulted in the disposal, re-disposal and mobilization of COCs and the release of COCs at, from, and/or to Kreher Park and Chequamegon Bay.

29. The Chequamegon Bay portion of the Ashland Site consists of approximately 16 acres directly off-shore from Kreher Park that the Agencies have determined is impacted by COCs. In addition to releases from Kreher Park, NSPW is informed and believes that Chequamegon Bay was historically used for commercial shipping, including wood and iron ore. Chequamegon Bay also contains wood waste and other debris from, *inter alia*, the former Schroeder property and the demolition and fill activities conducted by the City and others.

30. The City informed WDNR about potential contamination of Kreher Park in 1989. In 1991, WDNR completed an initial assessment of the Ashland Site and determined that further environmental investigation should occur.

31. In 1994, WDNR initiated a more comprehensive investigation and evaluation of the area. WDNR named NSPW as a PRP in 1995 for waste purportedly from the former MGP. WDNR notified the City and Wisconsin Central of their responsibility in 1997.

32. Beginning in 1995, NSPW performed and/or funded a series of investigations to, *inter alia*, characterize the purported subsurface contamination and affected sediments at the Ashland Site and identify PRPs for the Ashland Site. NSPW initially performed its investigations on the Upper Bluff/Filled Ravine portions of the Ashland Site, and WDNR investigated Kreher Park and the sediments. Costs that WDNR incurred as part of its investigations at Kreher Park and the sediments were resolved in the case captioned *Wisconsin v. NSP*, Ashland County Circuit Court, Case No. 04-CV-118. NSPW also performed two interim removal actions at the Ashland Site: (a) installing a contaminant-recovery system to pump and treat contaminants from the Copper Falls Aquifer; and (b) excavating contaminated soil and installing a low permeability cap and a groundwater extraction well.

33. NSPW subsequently signed an AOC with EPA on November 16, 2003, to perform the aforementioned RI/FS at the Ashland Site. (Ex 2 hereto). NSPW completed the RI/FS in 2008, and EPA issued a notice of completion for the AOC in 2010.

34. In September 2010, EPA issued its ROD setting forth EPA's selected remedy for the Ashland Site. On April 27, 2011, EPA issued Special Notice of Liability Letters to the City, Soo Line, Wisconsin Central and NSPW, informing those parties of their alleged liability and seeking the negotiation of a consent decree to implement the remedy selected in the ROD. Good faith settlement offers from the parties were universally rejected by EPA, and, on information and belief, NSPW was the only party to return to the negotiating table with an enhanced settlement offer in negotiating the 2012 Consent Decree.

35. NSPW has been in close cooperation with EPA and WDNR throughout the investigation of the Ashland Site and the CERCLA administrative process, including taking the leading role on site investigations, preparing technical work plans, remediation plans and design

reports, implementing interim actions and providing project management and technical support. NSPW is the only potentially responsible party to undertake such efforts.

36. NSPW negotiated in good faith with the Agencies, and pursuant to the 2012 Consent Decree filed under CERCLA §§ 106 and 107 (Ex. 4 hereto), NSPW is required to (i) perform the work to clean up the Upper Bluff/Filled Ravine, Kreher Park and Copper Falls portions of the Ashland Site, (ii) reimburse the United States for certain future costs (including interest), and (iii) fully compensate the natural resource Trustees for natural resource damages and assessment costs for the entire Ashland Site. NSPW continues to negotiate in good faith with the Agencies about the potential remediation of Chequamegon Bay.

B. The John Schroeder Lumber Company (Orphan Share)

37. In the early 1900s, approximately a dozen lumber mills lined the Ashland lakefront. Schroeder Lumber was a corporation organized under the laws of Wisconsin in 1881 and was headquartered in Milwaukee, Wisconsin.

38. In 1901, Schroeder Lumber purchased an existing lumber mill on the site referred to herein as Kreher Park. Schroeder Lumber expanded the facility's lumber and wood processing operations and shipping facilities on the lakefront. Upon information and belief, in Ashland, Schroeder Lumber operated one of the largest and best equipped mills in the country at the time. Schroeder maintained a vertically integrated business structure, cutting timber, railroading and shipping, and processing and milling lumber into finished commercial and consumer products, which it marketed. The company operated a number of affiliates, including Schroeder Mills & Timber Co., Schroeder Timber Products Co., Schroeder Land & Timber Co., Northern Pacific Logging Co., J-S Refrigeration Division, Schroeder Manatee Company, and the toy-making Playskool Institute.

39. During the height of its operations in Ashland, Schroeder Lumber operated 24 hours per day during the summer season, employed anywhere between 50 and more than 350 men, and produced upwards of 75 million board feet annually. In the Kreher Park portion of the Ashland Site, Schroeder Lumber operated, *inter alia*, a saw mill, planing mill, machine shop, electric light plant, lath mill, wood treatment facility, oil houses, a kiln, a refuse burner, pulpwood hoist, and dock piling operation. Schroeder Lumber's finished products included railroad ties, poles, dock pilings, rough and finished lumber, lath, shingles, flooring, and other commercial and consumer wood products. NSPW is informed and believes that the Ashland location was Schroeder's only wood processing facility.

40. Schroeder Lumber used a variety of COC-containing substances at the Ashland Facility in its operations and as wood preservers as part of the company's wood preservation and treatment operations, including, but not limited to petroleum, diesel, oils, and creosote. In 1991, the State of Wisconsin reported documented dumping of creosote-treated wood preservatives at the Schroeder operations.

41. The primary industrial process that Schroeder Lumber employed to treat wood at the Ashland Site was an open-tank, dip-treatment operation. The preservation process involved Schroeder Lumber employees dipping railroad ties and other wood materials into large, wooden, above-ground, tank-like structure(s) filled with creosote or other wood preserving substances containing COCs.

42. During this treatment process, spills from the tank were reportedly ubiquitous. Once dipped, Schroeder Lumber employees would remove the wood from the tank, scrape off excess wood treatment compounds and allow the wood to drip dry in stacked piles on the ground in the vicinity of the dip treating tank.

43. NSPW is informed and believes that Schroeder Lumber's lumber and wood processing operations continued at the Ashland Facility at least through 1939.

44. NSPW is informed and believes that, as a result of Schroeder Lumber's operations, Schroeder Lumber released and/or disposed of COCs that have caused, contributed to and/or exacerbated the contamination of Chequamegon Bay and Kreher Park. Schroeder Lumber also generated a significant amount of wood waste and wood processing residuals that are still present at the Ashland Facility.

45. Because Schroeder Lumber no longer exists, and no successor has yet been identified, its liability for the Ashland Facility is considered to be an "orphan share." However, the City subsequently owned and exercised dominion and control over the former Schroeder property, taking actions that resulted in the significant contribution to and/or exacerbation of contamination at the Ashland Facility, including mobilization of COCs in Kreher Park and Chequamegon Bay.

C. The City of Ashland

46. In 1942, the City purchased the former Schroeder Lumber property and its facilities (now part of the portion of the Ashland Site known as Kreher Park) from the County of Ashland. By the time the City purchased the Schroeder Lumber property, site structures had been razed, fixtures removed, and foundations dynamited. NSPW is informed and believes that the wood treatment dipping structures had also been demolished and the COC-containing substances were left on site and permitted to sink into, run off and pool on the ground, creating the former "pond" of wood treatment residuals, which is sometimes referred to as the misnamed "coal tar dump" or "waste tar dump." The City began a land assembly along the lakefront and later acquired additional parcels in western Kreher Park from the Soo Line in 1986.

47. NSPW is informed and believes that the City's industrial and municipal activities at and near the Ashland Facility, both before and after the City's purchase of the Schroeder property, caused, contributed to, and/or exacerbated the COC contamination of the Ashland Facility, including the mobilization of COCs in Kreher Park to Chequamegon Bay. Upon information and belief, the City acted with the intent to arrange for the disposal of hazardous substances.

48. Despite the City's own statements to EPA admitting the City is a liable party under CERCLA, the City has refused to perform any work or fund any investigation or cleanup of the Ashland Site. Indeed, despite months of NSPW's attempts to negotiate reasonable terms of access to allow NSPW and its contractors on the City property in Kreher Park to perform the cleanup work required by the 2012 Consent Decree, the City has refused and continues to refuse to grant NSPW access.

49. Upon information and belief, the City's activities on the former Schroeder property also resulted in a significant amount of wood waste and debris and wood processing residuals disposed of in Chequamegon Bay. Upon information and belief, the City disposed of this material with the intent to arrange for the disposal of hazardous substances.

1. **The City's Uncontrolled Waste Disposal Landfill Operations**

50. During the 1800s and early 1900s, the City regularly disposed of, and permitted/authorized the disposal of, wastes directly into Chequamegon Bay and into ravines transecting the lakefront area in the vicinity of the Ashland Site.

51. Among other activities, the City reclaimed the lakebed in the Kreher Park portion of the Ashland Site by directly transporting and dumping (and permitting others to transport and dump) into Chequamegon Bay solid, municipal, construction and demolition, and industrial waste materials. The City has admitted to dumping activities in Kreher Park.

52. Upon information and belief, the City's unregulated waste disposal practices resulted in the discharge of COCs to the Ashland Facility, and caused, contributed significantly to, and/or exacerbated the contamination of the Ashland Facility, including the mobilization of COCs from Kreher Park to Chequamegon Bay. Upon information and belief, the City acted with the intent to arrange for the disposal of hazardous substances.

2. The City's Uncontrolled Sewage And Wastewater Discharges

53. Prior to the City's construction of its municipal wastewater treatment plant ("WWTP") in 1951, the City discharged, and/or authorized or permitted the discharge of, all sanitary sewage and industrial wastewater directly to Chequamegon Bay without treatment. Upon information and belief, the sewage and wastewater discharged by the City, and/or authorized or permitted to be discharged, contained COCs that caused, contributed to and/or exacerbated the contamination of the Ashland Facility, including the mobilization of COCs from Kreher Park to Chequamegon Bay. Upon information and belief, the City acted with the intent to arrange for the disposal of hazardous substances.

54. Indeed, the City's historic discharges into Chequamegon Bay caused or contributed to outbreaks of a typhoid fever epidemic that caused deaths throughout the City in the early 1900s. NSPW is informed and believes that the City built the WWTP only after the Wisconsin Board of Health (WDNR's predecessor) threatened penalties and the City was sued by the State of Wisconsin for repeated failure to comply with Wisconsin law.

55. At all relevant times, NSPW is informed and believes the City owned and/or operated (and/or authorized, required or permitted) a sewer system, consisting of surface and/or subsurface sewers, culverts, ditches and other drainage features resulting in the discharge and migration of COCs that caused, contributed to, and/or exacerbated the contamination of the Ashland Facility, including the mobilization of COCs from Kreher Park to Chequamegon Bay.

Upon information and belief, the City acted with the intent to arrange for the disposal of hazardous substances.

56. Additionally, NSPW is informed and believes that the City also owned and/or operated an open sewer from at least 1901 to 1951—located at the western end of Kreher Park—through which COCs were discharged. Upon information and belief, discharges from the open sewer to the Ashland Site contained COCs, and caused, contributed to, and/or exacerbated the contamination of the Ashland Facility, including the mobilization of COCs from Kreher Park to Chequamegon Bay. Upon information and belief, the City acted with the intent to arrange for the disposal of hazardous substances.

3. The City's Construction and Excavation Activities

57. From approximately 1951 until 1992, the City owned, operated and maintained a WWTP in the Kreher Park portion of the Ashland Site.

58. The City constructed the WWTP in 1951, and subsequently expanded the WWTP in 1973. The WWTP was decommissioned in 1992, but still exists today at the Ashland Site.

59. Upon information and belief, the City conducted activities incident to the construction and expansion of the WWTP—including without limitation excavation, trenching, pumping and discharge of groundwater, grading, and installation of underground equipment—that caused, contributed to, and/or exacerbated the contamination of the Ashland Facility, by, *inter alia*, dispersing, transporting, redispersing, mobilizing and discharging COCs, and generally accelerating the spread and mobilization of COCs throughout the Ashland Facility.

60. The City has admitted in statements to EPA that it is certain some contaminants were disturbed and disposed during the WWTP construction and expansion. NSPW is informed and believes that the City and its contractors encountered during the construction and expansion of the WWTP wood debris, creosote and other materials, and that large quantities of these

materials were mobilized through their excavation and redispersed at the Ashland Facility. NSPW is informed and believes that the City and its contractors encountered during the construction and expansion of the WWTP sizeable volumes of COC-impacted groundwater, which they pumped directly to Chequamegon Bay without treatment. Upon information and belief, the City disposed of this material with the intent to arrange for the disposal of hazardous substances.

61. NSPW is informed and believes that during the City's period of ownership of Kreher Park and in connection with construction of the WWTP, the City installed a network of subsurface sewers, drainpipes, and/or culverts, including for the purpose of draining (and backfilling) the "pond" portion of Kreher Park—a relic of Schroeder Lumber's wood treatment operation that was created during the demolition of the Schroeder facilities—directly, and without treatment, to the Chequamegon Bay portion of the Ashland Site. Upon information and belief, the City's installation, ownership, maintenance, and/or operation of subsurface sewers, drainpipes, and/or culverts for the purpose of draining the "pond" caused, contributed to and/or exacerbated the contamination of the Ashland Facility, by, *inter alia*, dispersing, transporting, redispersing, mobilizing and discharging COCs, and generally accelerating the spread of COCs throughout the Ashland Facility.

62. Additionally, in the mid-1980s, the City conducted construction activities to extend Ellis Avenue, which serves as the western border of the Ashland Site. The City excavated a large area of thick, heavy, creosote tar near the railroad tracks, and disposed of the same at the Ashland Site, to the south of the WWTP. The City admits in statements to EPA that it is probable that contaminants were disturbed and moved during the Ellis Avenue extension by the City's own trucks. Upon information and belief, the City's disposal of contaminated soils

from the Ellis Avenue excavation at the Ashland Site caused, contributed to and/or exacerbated the contamination of the Ashland Facility, by, *inter alia*, dispersing, transporting, redisposing, mobilizing and discharging COCs, and generally accelerating the spread of COCs throughout the Ashland Facility. Upon information and belief, the City disposed of these materials with the intent of arranging for the disposal of hazardous substances.

63. In 1992, the City conducted construction activities to install the Prentice Avenue lift station, on the eastern portion of the Ashland Site. Upon information and belief, the City excavated soils and fill containing COCs, and subsequently deposited and spread the same around the Site as fill, or backfill, with the intent of arranging for disposal of hazardous substances. Upon information and belief, the City's disposal of contaminated soils from the Prentice Avenue excavation at the Site caused, contributed to and/or exacerbated the contamination of the Ashland Facility, by, *inter alia*, dispersing, transporting, redisposing, mobilizing and discharging COCs, and generally accelerating the spread of COCs throughout the Ashland Facility.

4. The City's Uncontrolled Discharges From The WWTP

64. Agency records indicate that the City discharged COCs to the Ashland Facility as part of its operation and decommissioning of the WWTP. After construction of the WWTP in 1951, the City continued to chronically discharge millions of gallons of raw sewage and wastewater to Chequamegon Bay each year, without treatment. Upon information and belief, the raw sewage and wastewater discharged by the City contained COCs, and caused, contributed to and/or exacerbated the contamination of the Ashland Facility, including the mobilization of COCs from Kreher Park to Chequamegon Bay. Upon information and belief, the City discharged this material with the intent to arrange for the disposal of hazardous substances.

65. Additionally, NSPW is informed and believes that beginning at least as early as the decommissioning of the WWTP in 1992, contaminated water routinely collected in the basement of the WWTP. At all relevant times, the City addressed the infiltration of such contaminated water by pumping the contaminated water directly to the Bay, without treatment. Upon information and belief, the City pumped this material to the Bay with the intent to arrange for the disposal of hazardous substances.

66. In 1997, WDNR tested water collected from the basement of the WWTP, determined that it contained elevated levels of COCs (including naphthalene and other PAH and VOC compounds), and directed the City to cease its uncontrolled discharge of contaminated water to Chequamegon Bay.

67. Upon information and belief, the City's uncontrolled discharges of contaminated water from the WWTP caused, contributed to and/or exacerbated the contamination of the Ashland Facility by, *inter alia*, dispersing, transporting, redispersing, mobilizing and discharging COCs, and generally accelerating the spread and mobilization of COCs throughout the Ashland Facility.

5. The City's Uncontrolled Stormwater Discharges

68. Agency records indicate that the City discharged, and/or authorized or permitted the discharge of, stormwater and/or urban runoff directly to Chequamegon Bay without treatment. The City owned and operated a combined storm and sanitary sewerage system from approximately the 1890s until the early to mid-1980s, at which time the storm sewer system was separated from the sanitary system to reduce flow to the WWTP. The City historically discharged and/or authorized or permitted to be discharged stormwater and/or urban runoff from these systems directly to Chequamegon Bay without treatment, through outfalls within the Ashland Site.

69. Beginning in 2003, the City rerouted certain stormwater lines through a water quality treatment basin located at the north end of 5th Avenue, but continued to discharge, and/or authorize or permit the discharge of, the collected water to Chequamegon Bay through different outfalls in the vicinity of the Kreher Park RV park area, east of the Site. NSPW is further informed and believes that the City continued to discharge, and/or authorize or permit the discharge of, untreated stormwater directly to Chequamegon Bay within the Ashland Site through at least one “bypass” outfall, which runs along Prentice Avenue through the Site, and discharges to Chequamegon Bay in the vicinity of the WWTP.

70. Upon information and belief, the stormwater and/or urban runoff discharged and/or authorized or permitted to be discharged by the City contained COCs that caused, contributed to and/or exacerbated the contamination of the Ashland Facility, including the mobilization of COCs from Kreher Park to Chequamegon Bay. Upon information and belief, the City acted with the intent to arrange for the disposal of hazardous substances.

D. Soo Line Railroad Company

71. From the early 1870s to 1987, Soo Line and/or its predecessors owned and operated on large portions of Kreher Park, including railway operations on the railroad right-of-way, spur tracks located throughout Kreher Park, a commercial dock, rail cars, and other facilities throughout Kreher Park.

72. Upon information and belief, Soo Line and/or its predecessors serviced the former Schroeder Lumber facility, the former MGP and the former commercial dock, and engaged in activities such as loading, off-loading and transporting materials containing COCs, including wood treatment materials, tars, oils and petroleum products, and engaged in or authorized dredging activities in or near the Ashland Facility. Upon information and belief, Soo Line’s

and/or its predecessors' operations resulted, caused, contributed to and/or exacerbated the contamination the Ashland Facility.

73. Upon information and belief, Soo Line and/or its predecessors dumped COC-containing substances such as tars and oils and other materials along the railroad tracks and shoreline in Kreher Park. NSPW is informed and believes that Soo Line's and/or its predecessors' railroad activities, including dumping in Kreher Park, caused, contributed to and/or exacerbated the contamination of the Ashland Facility. Upon information and belief, Soo Line dumped this material with the intent of arranging for disposal of hazardous substances.

E. Wisconsin Central Ltd.

74. From approximately 1987 to the present, Wisconsin Central has owned the historic railroad corridor that traverses the Ashland Site. Wisconsin Central acquired the existing railroad corridor, and related facilities, from the Soo Line.

75. Upon information and belief, in or about the mid-1980s, Soo Line created a wholly-owned division titled Lake States Transportation Division to own and operate approximately 2,000 miles of its rail lines, including the property and related facilities Soo Line owned and operated in Ashland at Kreher Park. Wisconsin Central purchased the Lake States division from Soo Line, including the property in Ashland, in or about October of 1987.

76. Upon information and belief, Wisconsin Central also is a successor to relevant liabilities of Soo Line arising out of the ownership and operation of the railroad corridor, and related facilities, within the Ashland Facility.

F. NSPW's Expenditures To Investigate And Cleanup The Ashland Site

77. Beginning with the onset of the Agencies' investigation in 1991, and continuing to the present, NSPW has provided the Agencies with substantial cooperation and support in investigating and remediating the Ashland Site, including PRP investigation costs.

78. Although Defendants caused, contributed to, mobilized and/or exacerbated alleged contamination at the Ashland Facility, to date, NSPW is the only potentially responsible party that has cooperated with the Agencies to perform work and/or fund the investigation and cleanup. NSPW's cooperative actions and commitments have and will impact its ratebase customers.

79. In fulfillment of obligations under the 2012 Consent Decree, NSPW has incurred and will incur significant costs that were or will be necessary and consistent with the National Contingency Plan.

80. In fulfillment of obligations under the 2012 Consent Decree, NSPW has incurred and will incur significant costs to compensate the Trustees for natural resource damages and assessment costs for the Ashland Site.

81. Additionally, NSPW already has incurred significant costs beyond its obligations under the 2012 Consent Decree, including but not limited to costs incurred pursuant to the 2003 AOC, that were necessary and consistent with the National Contingency Plan.

82. To date, NSPW has paid in excess of \$18 million to investigate and remediate the Ashland Site—an amount that is well in excess of its equitable share of responsibility.

83. Moreover, the cleanup of the Ashland Facility is not complete, and substantial work remains to be done. Consistent with the National Contingency Plan, NSPW will be spending a significant amount of money in the future to investigate and remediate the Ashland Facility. Although the 2012 Consent Decree specifically does not address but rather reserves claims and defenses related to the Chequamegon Bay portion of the Ashland Site, NSPW has incurred and may incur additional response costs at the Chequamegon Bay portion of the

Ashland Site, and a declaration by this Court concerning those matters will facilitate the full and final resolution of responsibility and liability at the Ashland Site.

FIRST CAUSE OF ACTION

(Claim For Cost Recovery Pursuant To CERCLA § 107)

84. NSPW realleges and incorporates by reference Paragraphs 1-83 above as if fully set forth herein.

85. CERCLA § 107(a), 42 U.S.C. § 9607(a), imposes strict liability on (1) the owner or operator of a facility, (2) any person who at the time of disposal of any hazardous substance owned or operated a facility at which hazardous substances were disposed of, (3) any person who by contract, agreement, or otherwise, arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances, and (4) any person who accepts or accepted any hazardous substances for transport to a facility from which there is a release or a threatened release.

86. CERCLA § 107(a)(4)(B), 42 U.S.C. § 9607(a)(4)(B), authorizes the recovery of “necessary costs of response consistent with the national contingency plan” and natural resource damages.

87. The Ashland Facility, including each of its site-specific areas of concern discussed above, is a “facility” within the meaning of CERCLA § 101(9), 42 U.S.C. § 9601(9).

88. The COCs are “hazardous substance[s]” within the meaning of CERCLA § 101(14), 42 U.S.C. § 9601(14).

89. There has been an actual and/or threatened “release” at the Ashland Facility of “hazardous substances” within the meaning of CERCLA §§ 101(14) and (22), 42 U.S.C. §§ 9601(14), (22).

The City of Ashland

90. The City is a “person” within the meaning of CERCLA § 101(21), 42 U.S.C. § 9601(21).

91. The City is a liable and responsible party for costs or damages incurred, or to be incurred, in connection with the “release” and/or threatened “release” of “hazardous substances” at the Ashland Facility pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a).

92. The City is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it is and/or was at the time of COC disposal an “owner” and/or “operator” of a “facility” within the meaning of CERCLA §§ 101(9) and (20), 42 U.S.C. §§ 9601(9), (20), from which there has been a “release” and/or threatened “release” of “hazardous substances” within the meaning of CERCLA §§ 101(14) and (22), 42 U.S.C. §§ 9601(14), (22).

93. The City acted with the intent to arrange for the disposal of hazardous substances, resulting in the release of COC’s at the Ashland Facility. As a result, the City is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it arranged by contract, agreement, or otherwise for the disposal or treatment of hazardous substances that have contaminated the Ashland Facility.

94. As a result of the City’s release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred and paid “response costs” within the meaning of CERCLA § 101(25), 42 U.S.C. § 9601(25). These “response costs” were necessary and consistent with the National Contingency Plan pursuant to CERCLA §§ 101(31) and 105, 42 U.S.C. §§ 9601(31), 9605.

95. NSPW seeks reimbursement from the City, pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a), for those necessary response costs that NSPW has incurred in investigating

and remediating the hazardous substances that the City has released and/or disposed of to the Ashland Facility that the court does not award under CERCLA § 113(f), 42 U.S.C. § 9613(f).

Soo Line

96. Soo Line is a “person” within the meaning of CERCLA § 101(21), 42 U.S.C. § 9601(21).

97. Soo Line is a liable and responsible party for costs or damages incurred, or to be incurred, in connection with the “release” and/or threatened “release” of “hazardous substances” at the Ashland Facility pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a).

98. Soo Line is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it is and/or was at the time of COC disposal an “owner” and/or “operator” of a “facility” within the meaning of CERCLA §§ 101(9) and (20), 42 U.S.C. §§ 9601(9), (20), from which there has been a “release” and/or threatened “release” of “hazardous substances” within the meaning of CERCLA §§ 101(14) and (22), 42 U.S.C. §§ 9601(14), (22).

99. Soo Line acted with the intent to arrange for the disposal of hazardous substances, resulting in the release of COC’s at the Ashland Facility. As a result, Soo Line is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it arranged by contract, agreement, or otherwise for the disposal or treatment of hazardous substances that have contaminated the Ashland Facility.

100. As a result of Soo Line’s release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred and paid “response costs” within the meaning of CERCLA § 101(25), 42 U.S.C. § 9601(25). These “response costs” were necessary and consistent with the National Contingency Plan pursuant to CERCLA §§ 101(31) and 105, 42 U.S.C. §§ 9601(31), 9605.

101. NSPW seeks reimbursement from Soo Line, pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a), for those necessary response costs that NSPW has incurred in investigating and remediating the hazardous substances that Soo Line has released and/or disposed of to the Ashland Facility that the court does not award under CERCLA § 113(f), 42 U.S.C. § 9613(f).

Wisconsin Central

102. Wisconsin Central is a “person” within the meaning of CERCLA § 101(21), 42 U.S.C. § 9601(21).

103. Wisconsin Central is a liable and responsible party for costs or damages incurred, or to be incurred, in connection with the “release” and/or threatened “release” of “hazardous substances” at the Ashland Facility pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a).

104. Wisconsin Central is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it is and/or was at the time of COC disposal an “owner” and/or “operator” of a “facility” within the meaning of CERCLA §§ 101(9) and (20), 42 U.S.C. §§ 9601(9), (20), from which there has been a “release” and/or threatened “release” of “hazardous substances” within the meaning of CERCLA §§ 101(14) and (22), 42 U.S.C. §§ 9601(14), (22).

105. As a result of the release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred and paid “response costs” within the meaning of CERCLA § 101(25), 42 U.S.C. § 9601(25). These “response costs” were necessary and consistent with the National Contingency Plan pursuant to CERCLA §§ 101(31) and 105, 42 U.S.C. §§ 9601(31), 9605.

106. NSPW seeks reimbursement from Wisconsin Central, pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a), for those necessary response costs that NSPW has incurred in

investigating and remediating the hazardous substances that were released and/or disposed of to the Ashland Facility that the court does not award under CERCLA § 113(f), 42 U.S.C. § 9613(f).

107. In accordance with CERCLA § 107(a), 42 U.S.C. 9607(a), NSPW is entitled to recover interest on the Ashland Facility response costs NSPW has paid.

108. Pursuant to CERCLA § 113(l), 42 U.S.C. § 9613(l), NSPW has provided a copy of this Complaint to the Attorney General of the United States and the Administrator of the EPA. Pursuant to the 2012 Consent Decree, NSPW has also provided copies to the United States Department of Justice, EPA, and WDNR.

SECOND CAUSE OF ACTION

(Claim For Contribution Pursuant To CERCLA § 113)

109. NSPW realleges and incorporates by reference Paragraphs 1-83 above as if fully set forth herein.

110. CERCLA § 113(f)(1), 42 U.S.C. § 9613(f)(1), authorizes any person to seek contribution for compelled response costs from any other person with common liability during or following any civil action under CERCLA §§ 106 or 107(a), 42 U.S.C. §§ 9606, 9607(a).

111. The Ashland Facility, including each of its site-specific areas of concern discussed above, is a “facility” within the meaning of CERCLA § 101(9), 42 U.S.C. § 9601(9).

112. The COCs are “hazardous substance[s]” within the meaning of CERCLA § 101(14), 42 U.S.C. § 9601(14).

113. There has been an actual and/or threatened “release” at the Ashland Facility of “hazardous substances” within the meaning of CERCLA §§ 101(14) and (22), 42 U.S.C. §§ 9601(14), (22).

The City of Ashland

114. The City is a “person” within the meaning of CERCLA § 101(21), 42 U.S.C. § 9601(21).

115. The City is a liable and responsible party for costs or damages incurred, or to be incurred, in connection with the “release” and/or threatened “release” of “hazardous substances” at the Ashland Facility pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a).

116. The City is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it is and/or was at the time of COC disposal an “owner” and/or “operator” of a “facility” within the meaning of CERCLA §§ 101(9) and (20), 42 U.S.C. §§ 9601(9), (20), from which there has been a “release” and/or threatened “release” of “hazardous substances” within the meaning of CERCLA §§ 101(14) and (22), 42 U.S.C. §§ 9601(14), (22).

117. The City acted with the intent to arrange for the disposal of hazardous substances, resulting in the release of COC’s at the Ashland Facility. As a result, the City is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it arranged by contract, agreement, or otherwise for the disposal or treatment of hazardous substances that have contaminated the Ashland Facility.

118. As a result of the City’s release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred and paid, and will continue to incur and pay, “response costs” within the meaning of CERCLA § 101(25), 42 U.S.C. § 9601(25). These “response costs” were and will be necessary and consistent with the National Contingency Plan pursuant to CERCLA §§ 101(31) and 105, 42 U.S.C. §§ 9601(31), 9605.

119. To the extent that the release and/or disposal of hazardous substances at the Ashland Facility resulted in injuries to natural resources, the City substantially contributed to that injury.

120. As a result of the City's release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred costs to compensate the Trustees for alleged natural resource damages and assessment costs under CERCLA § 107(a), 42 U.S.C. § 7607(a).

Soo Line

121. Soo Line is a "person" within the meaning of CERCLA § 101(21), 42 U.S.C. § 9601(21).

122. Soo Line is a liable and responsible party for costs or damages incurred, or to be incurred, in connection with the "release" and/or threatened "release" of "hazardous substances" at the Ashland Facility pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a).

123. Soo Line is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it is and/or was at the time of COC disposal an "owner" and/or "operator" of a "facility" within the meaning of CERCLA §§ 101(9) and (20), 42 U.S.C. §§ 9601(9), (20), from which there has been a "release" and/or threatened "release" of "hazardous substances" within the meaning of CERCLA §§ 101(14) and (22), 42 U.S.C. §§ 9601(14), (22).

124. Soo Line acted with the intent to arrange for the disposal of hazardous substances, resulting in the release of COC's at the Ashland Facility. As a result, Soo Line is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it arranged by contract, agreement, or otherwise for the disposal or treatment of hazardous substances that have contaminated the Ashland Facility.

125. As a result of Soo Line's release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred and paid, and will continue to incur and pay, "response costs" within the meaning of CERCLA § 101(25), 42 U.S.C. § 9601(25). These "response costs" were and will be necessary and consistent with the National Contingency Plan pursuant to CERCLA §§ 101(31) and 105, 42 U.S.C. §§ 9601(31), 9605.

126. To the extent that the release and/or disposal of hazardous substances at the Ashland Facility resulted in injuries to natural resources, Soo Line substantially contributed to that injury.

127. As a result of Soo Line's release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred costs to compensate the Trustees for alleged natural resource damages and assessment costs under CERCLA § 107(a), 42 U.S.C. § 7607(a).

Wisconsin Central

128. Wisconsin Central is a "person" within the meaning of CERCLA § 101(21), 42 U.S.C. § 9601(21).

129. Wisconsin Central is a liable and responsible party for costs or damages incurred, or to be incurred, in connection with the "release" and/or threatened "release" of "hazardous substances" at the Ashland Facility pursuant to CERCLA § 107(a), 42 U.S.C. § 9607(a).

130. Wisconsin Central is a liable and responsible party under CERCLA § 107(a), 42 U.S.C. § 9607(a), because it is and/or was at the time of COC disposal an "owner" and/or "operator" of a "facility" within the meaning of CERCLA §§ 101(9) and (20), 42 U.S.C. §§ 9601(9), (20), from which there has been a "release" and/or threatened "release" of "hazardous substances" within the meaning of CERCLA §§ 101(14) and (22), 42 U.S.C. §§ 9601(14), (22).

131. As a result of the release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred and paid, and will continue to incur and pay, "response costs" within the meaning of CERCLA § 101(25), 42 U.S.C. § 9601(25). These "response costs" were and will be necessary and consistent with the National Contingency Plan pursuant to CERCLA §§ 101(31) and 105, 42 U.S.C. §§ 9601(31), 9605.

132. To the extent that the release and/or disposal of hazardous substances at the Ashland Facility resulted in injuries to natural resources, Wisconsin Central substantially contributed to that injury.

133. As a result of the release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred costs to compensate the Trustees for alleged natural resource damages and assessment costs under CERCLA § 107(a), 42 U.S.C. § 7607(a).

Orphan Shares

134. As a result of insolvent, defunct or otherwise absent parties' release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred and paid, and will continue to incur and pay, "response costs" within the meaning of CERCLA § 101(25), 42 U.S.C. § 9601(25). These "response costs" were and will be necessary and consistent with the National Contingency Plan pursuant to CERCLA §§ 101(31) and 105, 42 U.S.C. §§ 9601(31), 9605.

135. Insolvent, defunct or otherwise absent parties' releases and/or disposal of hazardous substances at the Ashland Facility were a substantial contributing factor to injuries to natural resources under CERCLA § 101(16) at the Ashland Site.

136. As a result of insolvent, defunct or otherwise absent parties' release and/or disposal of hazardous substances at the Ashland Facility, NSPW has incurred natural resource damages under CERCLA § 107(a), 42 U.S.C. § 7607(a).

137. NSPW has made direct payments, and has reimbursed payments made by the United States and the State of Wisconsin, in amounts greater than NSPW's equitable share of response costs at the Ashland Facility and natural resource damages at the Ashland Site. NSPW also has made other payments and/or incurred costs related to its in-kind services for the investigation and remediation of the Ashland Facility that are greater than NSPW's equitable share of those costs.

138. Defendants have not expended their equitable share of response costs at the Ashland Facility or damages at the Ashland Site.

139. NSPW seeks and is entitled to contribution from each Defendant, pursuant to CERCLA § 113(f), 42 U.S.C. § 9613(f), for those necessary response costs that NSPW has incurred and will incur in investigating and remediating the hazardous substances that each Defendant has released and/or disposed of to the Ashland Facility, which are not recoverable under CERCLA § 107(a), 42 U.S.C. § 9607(a), and the damages it has incurred in connection with the Ashland Site.

140. NSPW seeks and is entitled to an allocation of response costs among liable parties using such equitable factors as the Court deems appropriate pursuant to CERCLA § 113(f)(1), 42 U.S.C. § 9613(f)(1). NSPW requests that the Court determine the parties' proper allocable share of response costs at the Ashland Facility and damages at the Ashland Facility and determine that Defendants are liable to NSPW for those costs and damages paid by NSPW that are in excess of NSPW's equitable share and that are properly attributable to Defendants.

141. NSPW seeks and is entitled to recovery or contribution for a share of response costs allocated to insolvent, defunct or otherwise absent parties who have no ability to pay and who are not otherwise affiliated with any PRP at the site (“orphan shares”) among liable parties using such equitable factors as the Court deems appropriate pursuant to CERCLA § 113(f)(1), 42 U.S.C. § 9613(f)(1). NSPW requests that the Court determine the parties’ allocable share of the “orphan share” with respect to the costs at or attributable to the Ashland Facility and determine that Defendants are liable to NSPW for those costs and damages paid by NSPW that are in excess of NSPW’s equitable share of the “orphan share.”

142. In accordance with CERCLA § 107(a), 42 U.S.C. 9607(a), NSPW is entitled to recover interest on the Ashland Facility response costs and compensation paid to the Trustees for natural resource damages and assessment costs at the Ashland Site that NSPW has paid and will pay in the future.

143. Pursuant to CERCLA § 113(l), 42 U.S.C. § 9613(l), NSPW has provided a copy of this Complaint to the Attorney General of the United States and the Administrator of the EPA. Pursuant to the 2012 Consent Decree, NSPW has also provided copies to the United States Department of Justice, EPA, and WDNR.

THIRD CAUSE OF ACTION

(Claim For Declaratory Relief)

144. NSPW realleges and incorporates by reference Paragraphs 1-143 above as if fully set forth herein.

145. CERCLA § 113(g)(2), 42 U.S.C. § 9613(g)(2), provides that in any action for recovery of response costs, the court shall enter a declaratory judgment on liability for response

costs or damages that will be binding in any subsequent action to recover further response costs or damages.

146. The Declaratory Judgment Act, 22 U.S.C. § 2201 *et seq.*, provides that “[i]n a case of actual controversy within its jurisdiction . . . , any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought.”

147. NSPW alleges that each Defendant is liable, in whole or in part, for past and future response costs incurred by NSPW arising from the Ashland Facility. EPA has required, is requiring, and will require NSPW to fund past response costs previously undertaken and future response costs yet to be performed at the Ashland Facility.

148. NSPW is informed and believes, and on that basis alleges, that each Defendant has refused to acknowledge its fair and reasonable share of past and future investigatory and response costs arising from the Ashland Facility, including without limitation, each Defendant’s fair and reasonable share of the share of response costs apportioned to any “orphan” or others who may avoid statutory liability.

149. Accordingly, there has arisen and now exists an actual controversy between NSPW and each Defendant relating to liability and responsibility for the costs at the Ashland Facility, and how such costs should be allocated. The controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

150. Absent a judicial declaration setting forth the parties’ rights and obligations, including the appropriate allocable shares under CERCLA, a multiplicity of actions may result, and NSPW may be obligated in the future to pay costs and damages, that under CERCLA, are in fact the responsibility of each Defendant.

151. Pursuant to CERCLA § 113(g)(2), 42 U.S.C. § 9313(g)(2), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, NSPW is entitled to a declaration from this Court, and requests a judgment in its favor as set forth herein. Such a declaration would avoid the potential for a multiplicity of actions related to future costs and effectuate a just and speedy resolution of the issues and liabilities.

FOURTH CAUSE OF ACTION

(Negligence under Wisconsin State Law – Soo Line)

152. NSPW realleges and incorporates by reference Paragraphs 1-83 above as if fully set forth herein.

153. Soo Line failed to exercise due care in its railway operations on the railroad right-of-way and spur tracks located throughout Kreher Park, including but not limited to a failure to exercise due care in loading, off-loading and transporting materials containing COCs, including wood treatment materials, tars, oils and petroleum products.

154. Soo Line's and/or its predecessors' railroad activities, including careless loading and transport operations, resulted in spills, and caused, contributed to and/or exacerbated the contamination of the Ashland Facility.

155. Soo Line and/or its predecessors failed to exercise due care by dumping COC-containing substances such as tars and oils and other materials along the railroad tracks and shoreline in Kreher Park.

156. Soo Line's and/or its predecessors' railroad activities, including dumping in Kreher Park, caused, contributed to and/or exacerbated the contamination of the Ashland Facility.

157. Soo Line knew or, in the exercise of reasonable care, should have known that, as a result of its actions described above, harmful substances, including COCs, were substantially certain to be released to the Ashland Facility, causing, contributing to and/or exacerbating damage at the Ashland Facility. Soo Line failed to exercise due care by failing to take steps to mitigate, clean up, or stop the continuing migration of contaminants from its property to the remainder of the Ashland Facility after it knew or should have known of the existence of such contamination.

158. As a direct and proximate result of the negligent acts and omissions described above, NSPW has incurred costs and damages for which Soo Line is liable to NSPW.

FIFTH CAUSE OF ACTION

(Creation of a Public Nuisance under Wisconsin State Law – Soo Line)

159. NSPW realleges and incorporates by reference Paragraphs 1-83 above as if fully set forth herein.

160. Through its intentional actions and/or omissions, Soo Line released and/or disposed of COCs, which EPA asserts have resulted in health hazards to humans, fish and wildlife, which has caused, contributed to and/or exacerbated these alleged hazards throughout the Ashland Facility. Therefore, these releases amount to the creation of a public nuisance as they constitute an intentional activity or use of property that interferes substantially with the comfortable enjoyment of life, health and safety of others.

SIXTH CAUSE OF ACTION

(Maintenance of a Public Nuisance under Wisconsin State Law – Soo Line)

161. NSPW realleges and incorporates by reference Paragraphs 1-83 above as if fully set forth herein.

162. Soo Line had actual and/or constructive notice of the alleged hazards posed to human health and the environment by concentration of COCs that EPA asserts result in health hazards to humans, fish and wildlife throughout the Ashland Facility.

163. Soo Line negligently maintained and operated the railways and failed to exercise reasonable care by, failing to take steps to mitigate, clean up, or stop the continuing migration of contaminants from its property to the remainder of the Ashland Facility after it knew or should have known of the existence of such contamination.

164. Soo Line failed to abate the public nuisance caused by concentrations of COCs that EPA asserts result in health hazards to humans, fish and wildlife throughout the Ashland Facility.

165. Soo Line is liable to NSPW for compensatory damages as a result of the harm suffered by NSPW due to these releases, and Soo Line must also abate the public nuisance.

SEVENTH CAUSE OF ACTION

(Negligence under Wisconsin State Law – Wisconsin Central)

166. NSPW realleges and incorporates by reference Paragraphs 1-83 above as if fully set forth herein.

167. Wisconsin Central negligently maintained and operated the railways and failed to exercise reasonable care by, failing to take steps to mitigate, clean up, or stop the continuing migration of contaminants from its property to the remainder of the Ashland Facility after it knew or should have known of the existence of such contamination.

168. As a direct and proximate result of the negligent acts and omissions described above, NSPW has incurred costs and damages for which Soo Line is liable to NSPW.

EIGHTH CAUSE OF ACTION

(Wisconsin Common Law Contribution – Soo Line and Wisconsin Central)

169. NSPW realleges and incorporates by reference Paragraphs 1-83 above as if fully set forth herein.

170. Soo Line created and maintained a public nuisance at the Ashland Facility.

171. Wisconsin Central is successor to relevant liabilities of Soo Line arising out of the ownership and operation of the railroad corridor.

172. Soo Line and Wisconsin Central's negligent actions resulted in damages or injury at the Ashland Facility.

173. NSPW expended more than its equitable share of costs related to the damage or injury related to the presence of COCs and wood debris at the Ashland Facility caused by Soo Line.

174. Soo Line and Wisconsin Central have not expended their equitable share of costs or damages at the Ashland Facility.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff NSPW prays for judgment and relief, as follows:

a) Against all Defendants for cost recovery, contribution, damages, and/or restitution under CERCLA for past and future response costs, including reasonable attorneys' fees, expert witness' fees, oversight costs, and interest incurred by NSPW to investigate and remediate the contamination at the Ashland Facility, in an amount to be proven at trial;

b) Against all Defendants for compensation paid to the Trustees for alleged natural resource damages, including assessment costs, at the Ashland Site, in an amount to be proven at trial;

c) Against all Defendants for a judicial determination under CERCLA and the federal Declaratory Judgment Act that the Defendants are liable for future response costs, including reasonable attorneys' fees, expert witness' fees, oversight costs, and interest incurred by NSPW to investigate and remediate the contamination at the Ashland Facility;

d) Against all Defendants for costs of suit, reasonable attorneys' fees, consulting fees, expert witness fees, and other fees and expenses incurred herein;

e) Against Wisconsin Central and/or the Soo Line for an award of compensatory damages and costs as a result of the harm suffered by NSPW as a result of the Wisconsin Central and/or the Soo Line's intentional and negligent acts, and/or any order directing Wisconsin Central and/or the Soo Line to abate the public nuisance; and

f) Against all Defendants for such other and further relief as the Court may deem just and proper.

Dated: August 17, 2012

Respectfully submitted,

s/ Ian A.J. Pitz

Ian A.J. Pitz

David A. Crass

Albert Bianchi, Jr.

MICHAEL BEST & FRIEDRICH LLP

One South Pinckney Street, Suite 700

Madison, WI 53703

Telephone: (608) 257-3501

Facsimile: (608) 283-2275

Email: iapitz@michaelbest.com

dacrass@michaelbest.com

abianchi@michaelbest.com

Mary Rose Alexander

Arthur Foerster

Margrethe Kearney

LATHAM & WATKINS LLP

233 South Wacker Drive, Suite 5800

Chicago, IL 60606

Telephone: (312) 876-7700

Facsimile: (312) 993-9767

Email: Mary.Rose.Alexander@lw.com

Arthur.Foerster@lw.com

Margrethe.Kearney@lw.com

Attorneys for Plaintiff

Northern States Power Wisconsin

ASHLAND HARBOR, WIS.

LETTER

FROM

THE SECRETARY OF WAR

TRANSMITTING

A LETTER FROM THE CHIEF OF ENGINEERS, UNITED STATES ARMY, DATED JUNE 2, 1941, SUBMITTING A REPORT, TOGETHER WITH ACCOMPANYING PAPERS AND AN ILLUSTRATION, ON REEXAMINATION OF ASHLAND HARBOR, WIS., REQUESTED BY RESOLUTION OF THE COMMITTEE ON RIVERS AND HARBORS, HOUSE OF REPRESENTATIVES, ADOPTED JANUARY 19, 1940

JULY 31, 1941.—Referred to the Committee on Rivers and Harbors and ordered to be printed with an illustration

WAR DEPARTMENT,
Washington, July 26, 1941.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEAR MR. SPEAKER: I am transmitting herewith a report dated June 2, 1941, from the Chief of Engineers, United States Army, on reexamination of Ashland Harbor, Wis., requested by resolution of the Committee on Rivers and Harbors, House of Representatives, adopted January 19, 1940, together with accompanying papers and illustration.

The Bureau of the Budget has been consulted and advises that while there would be no objection to the submission of this proposed report, it would not be in accord with the program of the President, in the absence of evidence showing that the proposed works possess important defense values, to submit during the present emergency any estimate of appropriation for the construction of the project.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

ASHLAND HARBOR, WIS.

WAR DEPARTMENT,
OFFICE OF THE CHIEF OF ENGINEERS,
Washington, June 2, 1941.

The CHAIRMAN, COMMITTEE ON RIVERS AND HARBORS,
House of Representatives,

Washington, D. C.

MY DEAR MR. CHAIRMAN: 1. The Committee on Rivers and Harbors of the House of Representatives, by resolution adopted January 19, 1940, requested the Board of Engineers for Rivers and Harbors to review the reports on Ashland Harbor, Wis., printed in River and Harbor Committee Document No. 46, Seventy-second Congress, first session, with a view to determining if it is advisable to modify the existing project in any way at this time. I enclose the report of the Board in response thereto.

2. After full consideration of the reports secured from the district and division engineers, the Board recommends modification of the existing project for Ashland Harbor, Wis., to provide for widening the authorized 400-foot channel, along the water front in the westerly part of the harbor, so as to afford a channel 400 feet wide at its easterly end gradually flared to a width of 750 feet at its westerly end, all to a depth of 21 feet, at an estimated first cost of \$24,000, with no increase in the previously estimated cost of maintenance; subject to the condition that local interests furnish free of cost to the United States all spoil-disposal areas necessary for the further improvement and its subsequent maintenance, when and as required, and hold and save the United States free from claims for damages resulting from the work.

3. After due consideration of these reports, I concur in the views and recommendations of the Board.

Very truly yours,

J. L. SCHLEY,
Major General,
Chief of Engineers:

REPORT OF THE BOARD OF ENGINEERS FOR RIVERS AND HARBORS

WAR DEPARTMENT,
THE BOARD OF ENGINEERS FOR RIVERS AND HARBORS,
Washington, April 29, 1941.

Subject: Ashland Harbor, Wis.

To: The Chief of Engineers, United States Army.

1. This report is in response to the following resolution adopted January 19, 1940:

Resolved by the Committee on Rivers and Harbors of the House of Representatives, United States, That the Board of Engineers for Rivers and Harbors created under section 3 of the River and Harbor Act, approved June 13, 1902, be and is hereby, requested to review the reports on Ashland Harbor, Wisconsin, printed in River and Harbor Committee Document Numbered 46, Seventy-second Congress, first session, with a view to determining if it is advisable to modify the existing project in any way at this time.

2. Ashland Harbor is at the head of Chequamegon Bay, on the south side of Lake Superior, about 95 miles east of Duluth. The bay is a large and nearly landlocked body of water with generally good depth for

navigation, but with shoal areas near the shore. The existing Federal project for Ashland Harbor provides for a channel 400 feet wide and 21 feet deep from deep water in the bay to the vicinity of the public wharf on the westerly water front, thence a similar channel westerly along the water front for about one-half mile to the vicinity of Reiss coal dock No. 2, thence a channel 200 feet wide and 20 feet deep westerly about 3,700 feet; for an east basin 25 feet deep, about 4,800 feet long on the water front and extending to deep water in the bay; and for an easterly protective breakwater 8,000 feet long. These improvements have been completed and maintained except for the 200-foot westerly channel in which an 18-foot depth has proved ample. The costs to December 31, 1940, have been \$732,000 for new work and \$468,000 for maintenance. The approved estimate for annual cost of maintenance is \$19,000.

3. Ashland has a population of 11,300 and is the fourth largest city on Lake Superior. Its water-borne commerce in 1939 totaled over 6,400,000 tons which is 2,000,000 tons above the 10-year average. Shipments of iron ore from the Gogebic range, southeast of Ashland, accounted for over 90 percent of the 1939 commerce. Receipts at the port included 376,000 tons of coal and 98,000 tons of wood and paper products, mostly rafted pulpwood. The ore is shipped from 3 docks on the east basin. The westerly harbor improvement is mainly used by vessels in the coal trade, tugs towing pulpwood, and recreational craft. Pulpwood is also received by the Marathon Paper Co. easterly of the east basin. The community is served by good highways and by 5 railroads.

4. Local interests request, for the westerly portion of the harbor, deepening to 21 feet of an area about 2,000 feet wide between the existing 400-foot water-front channel, and deep water in the bay, a maximum distance of 4,000 feet. The Lake Carriers Association has proposed that if this is not to be done, the 400-foot channel be widened at its westerly end to 750 feet. Improvement in this vicinity is claimed to be warranted in the interest of safety and convenience to existing navigation as delays and groundings have occurred due to the difficulty of turning to approach Reiss coal dock No. 2 from the 400-foot channel. Local interests also request removal of a shoal which lies east of the east basin, and some contend that deepening to 25 feet of a portion of the shoal area is desirable. They state that the shoal, which has a minimum depth of 3 feet below low-water datum, has caused the grounding of numerous small craft and a pulpwood raft.

5. The district engineer finds that ample depth of water for small boats and rafts exists on all sides of the shoal in the easterly part of the harbor, and that the groundings there are preventable by suitable marking of the shoal area. He considers depths to the vicinity of the Marathon Paper Co.'s wharf adequate for existing navigation. He notes that groundings in the westerly portion of the harbor have been confined to vessels turning to reach the dock at the westerly end of the 400-foot channel. He concludes that widening of the channel from 400 feet at its easterly end to 750 feet at its westerly end would be adequate to permit vessels to navigate with safety. Accordingly, he considers the more extensive improvement preferred by local interests as unwarranted. He estimates the initial cost of the lesser improvement at \$24,000 and the annual cost at \$930. He notes that during the past 10 years an annual average of 166,000 tons of coal has been handled at the dock near which the several

ASHLAND HARBOR, WIS.

groundings have occurred and considers that the improvement would be justified in the interest of safety and convenience to this commerce. The district and division engineers concur in recommending the work.

6. Local interests were advised of the nature of the partially favorable recommendation of the division engineer and invited to present additional information for consideration by the Board. No communications have been received.

VIEWS AND RECOMMENDATIONS OF THE BOARD OF ENGINEERS FOR RIVERS AND HARBORS

7. The Board concurs in general with the reporting officers. Suitable marking of the shoal area, together with the channels already provided, will reasonably meet the needs of navigation in the easterly portion of Ashland Harbor. A limited further improvement by the United States to reduce delays and the danger of groundings in the westerly portion of the harbor would be justified by benefits to existing commerce. The Board recommends modification of the existing project for Ashland Harbor, Wis., to provide for widening the authorized 400-foot channel, along the water front in the westerly part of the harbor, so as to afford a channel 400 feet wide at its easterly end gradually flared to a width of 750 feet at its westerly end, all to a depth of 21 feet, at an estimated first cost of \$24,000, with no increase in the previously estimated cost of maintenance; subject to the condition that local interests furnish free of cost to the United States all spoil-disposal areas necessary for the further improvement and its subsequent maintenance, when and as required, and hold and save the United States free from claims for damages resulting from the work.

For the Board.

THOMAS M. ROBINS,
Brigadier General, Corps of Engineers,
Senior Member.

REEXAMINATION OF ASHLAND HARBOR, WIS.

SYLLABUS

The district engineer concludes that Ashland Harbor is worthy of further improvement by the United States and recommends that the West Channel be widened to a maximum width of 750 feet, at an estimated cost of \$24,000.

WAR DEPARTMENT,
UNITED STATES ENGINEER OFFICE,
Duluth, Minn., January 20, 1941.

Subject: Review of reports on Ashland Harbor, Wis.

To: The Chief of Engineers, United States Army.

[Through the Division Engineer, Great Lakes Division, Cleveland, Ohio.]

AUTHORITY

1. This report on Ashland Harbor, Wis., is submitted pursuant to the following resolution adopted January 19, 1940:

Resolved by the Committee on Rivers and Harbors of the House of Representatives, United States, That the Board of Engineers for Rivers and Harbors created under

section 3 of the River and Harbor Act, approved June 13, 1902, be, and is hereby, requested to review the reports on Ashland Harbor, Wisconsin, printed in River and Harbor Committee Document Numbered 46, Seventy-second Congress, first session, with a view to determining if it is advisable to modify the existing project in any way at this time.

REPORT BEING REVIEWED

2. The report being reviewed is an examination and survey report submitted by the Chief of Engineers on July 9, 1932. The Chief of Engineers recommended enlarging and deepening the East Basin to 25-foot depth and deepening the 400-foot sections of the West Channel to a 21-foot depth. These recommendations were adopted by Congress in the River and Harbor Act of August 30, 1935.

DESCRIPTION

3. Ashland Harbor is situated at the head of Chequamegon Bay on the southern shore of Lake Superior. It is 95 miles east of Duluth, Minn., and 348 miles west of Sault Ste. Marie, Mich. The bay is about 5 miles wide by 12 miles long and is separated from the lake by a sand spit, leaving an opening 2 miles wide along the western shore. To the north of the opening are the Apostle Islands, which protect it from lake storms. The harbor comprises the improved portion of the bay along the front of the city of Ashland, being partially limited by a breakwater. The harbor is shown on United States Lake Survey charts No. 9, Lake Superior, and No. 964, Ashland and Washburn Harbors; on the United States Geological Survey map of Wisconsin; and on the accompanying maps.¹

4. The improvements to the harbor have produced two separate deep-water areas along the front of the harbor. These areas are known as the East Basin, which is maintained at a depth of 25 feet, and the West Channel, which has a project depth of 21 feet in the eastern portion and 20 feet in the western part. There is no connecting channel between these areas, although vessels drawing 18 feet may pass from one area to the other at any place outside of 400 feet offshore from the established harbor line. All the iron-ore docks at Ashland, three in number, are located on the East Basin. The West Channel is mainly used by vessels in the coal trade, recreational craft, and tugs pulling pulpwood rafts. In addition, considerable pulpwood is received by the Marathon Paper Mills plant located just east of the East Basin.

5. The water level at Ashland fluctuated about 1 foot during the course of the year. There is no tide. Low-water datum is at elevation 601.6 feet above mean tide at New York. The size of the bay permits the generation within itself of waves, which in a northeast storm are augmented by the swell coming in from the lake. The 8,000-foot rubble-mound breakwater constructed by the United States offers more or less complete protection to about 3 miles of harbor front. The navigation season extends from late in April to late in November.

6. There are no bridges in Ashland Harbor. The proposed improvements would not affect water power or other special subjects, and no shore-line changes would be effected.

¹ Only Map No. 1 printed.

TRIBUTARY AREA

7. The terrain at the head and to the east of Chequamegon Bay is low and, in many places, marshy. That to the west, including Bayfield Peninsula, is rolling, with generally rocky shores. This region is considered the best fruit-bearing section of Wisconsin, and its soil is especially suited for the growing of fruit trees, berries, and dairy crops. The Apostle Islands, 22 in number, lie off Bayfield Peninsula. They are rocky in nature, with deep passages between them, thus forming natural shelter for vessels of all sizes.

8. To the southeast of Chequamegon Bay is the Gogebic iron range, which runs roughly parallel to Lake Superior about 10 miles inland. The ore obtained there is of high quality and is all shipped by vessel from Ashland.

9. Ashland, which has a population of 11,304, is the fourth largest city on Lake Superior. It owes its existence to its harbor, and the fact that it is the shipping point for iron ore has enabled the city to grow and maintain its prosperity. Its principal industries include several creameries; the handling of coal, iron ore, and pulpwood, and paper manufacturing. The iron ore shipped from Ashland goes by lake freighters to the harbors of the Lower Lakes. The coal brought in is distributed in Ashland and a large surrounding area. The pulpwood rafted from Canada by the Marathon Paper Mills and the Newaygo Tug Line is transshipped by rail to pulp mills in eastern Wisconsin. Some of the pulp is then shipped back to Ashland where the Marathon Paper Mills has a paper-manufacturing plant.

10. The community is served by good highways running in all directions and by five railroads: The Minneapolis, St. Paul & Sault Ste. Marie; the Chicago & Northwestern; the Chicago, St. Paul, Minneapolis & Omaha; the Northern Pacific; and the Duluth, South Shore & Atlantic.

11. The commercial and recreational fishing of the vicinity has centered mainly at Bayfield, about 15 miles north of Ashland, although some is done from Ashland itself.

12. At Barksdale, across the bay from Ashland, is a Du Pont explosives factory, and to the north of it is Washburn, a town of 2,238 inhabitants, according to the 1930 census.

PRIOR REPORTS

13. Previous reports have been submitted on this harbor as follows:

Date of report	Document			Recommendation	Adopted by Congress, River and Harbor Act
	No.	Congress	Session		
1885.....	89	48	2	Construction of 7,900 linear feet of breakwater at a cost of \$125,000, and dredging at a cost of \$11,000.	Aug. 5, 1886
Jan. 13, 1910.....	536	61	2	Dredging of a channel 20 feet deep and 200 feet wide along the western water front at a cost of \$46,000, and widening to 400 feet at a later date at a cost of \$113,000.	Aug. 11, 1888
Oct. 23, 1916.....	1608	64	2	Defined the then-existing project and recommended completion at a cost of \$10,000.	Aug. 8, 1917
Apr. 9, 1930.....	133	71	2	Dredging at a cost of \$230,000 to widen 2,500 feet of the existing 20-foot West Channel to 400 feet, to provide an approach channel 400 feet wide to the same depth, and to provide a harbor basin in the eastern portion of the harbor 22 feet deep.	July 3, 1930
July 9, 1932.....	46	72	1	Extension of project lines in the east basin lakeward and deepen to 25 feet at a cost of \$196,000, and deepen the 400-foot-wide West Channel to 21 feet, at a cost of \$12,000.	Aug. 30, 1935

EXISTING PROJECT

14. There were no previous projects.

15. The existing project provides for the construction and maintenance of an 8,000-foot breakwater; of a dredged channel, called the West Channel, along the dock front 75 feet outside the harbor lines, 200 feet wide and 20 feet deep from a point 400 feet west of Seventeenth Avenue West produced to Eighth Avenue West produced, and thence 400 feet wide and 21 feet deep from Eighth Avenue West produced to Ellis Avenue produced; of an entrance channel 400 feet wide and 21 feet deep extending in a northerly direction from the easterly end of the West Channel; and of a basin, called the East Basin, 25 feet deep and about 4,800 feet long, extending from a point about 400 feet west of the Soo Line dock to a point 1,000 feet east of the Chicago & Northwestern dock No. 3, and extending from a line 75 feet outside of the harbor line to deep water in the bay.

16. The existing project was completed in 1936 and is completely maintained except for the 200-foot section of the West Channel, where an 18-foot depth has proven ample for the existing commerce. The total costs to December 31, 1940, were \$732,375.49 for new work and \$467,515.97 for maintenance. The present approved annual maintenance cost is \$19,000. The average annual maintenance cost during the last 5 years has been less than the estimated average annual maintenance cost but is expected to approach it over a longer period of time. Yearly maintenance is not required, so a 5-year period does not give a true average.

LOCAL COOPERATION

17. There has been no need for local cooperation in Ashland Harbor, and none has been furnished or required.

OTHER IMPROVEMENTS

18. The city of Ashland reports that about \$22,000 has been expended for city dock facilities. The city has also cooperated with the Civil Aeronautics Authority and the National Youth Administration in the establishment of floating seaplane-mooring facilities.

TERMINAL AND TRANSFER FACILITIES

19. There are in Ashland three modern iron-ore docks open to all users on equal terms; three coal docks; one public wharf, a number of lumber wharves mostly in ruins and but little used, and several public and private small-craft wharves. A description of the principal docks follows:

20. The Chicago & Northwestern ore dock No. 2, served by the East Basin, was built in 1886 by the Milwaukee Lake Shore & Western Railroad. It has been remodeled and enlarged twice and now has a height of 70 feet, a width of 49.5 feet, a pocket section length of 1,668 feet, and a storage capacity of 55,600 tons.

21. The Chicago & Northwestern ore dock No. 3 was built by the Chicago & Northwestern in 1916 and is adjacent to the East Basin. It was enlarged in 1920 and now has a height of 73.5 feet,

a width of 51.5 feet, a pocket section length of 2,040 feet, and a storage capacity of 85,000 tons.

22. The Minneapolis, St. Paul & Sault Ste. Marie ore dock No. 2 was completed in 1917 by the Soo Line at a cost of more than \$1,000,000. It is adjacent to the East Basin. It was extended in 1924 and now has a height of 80 feet, a width of 59 feet, a pocket section length of 1,800 feet, and a storage capacity of 105,000 tons.

23. The Reiss coal dock No. 1, served by the East Basin, was built in 1887 by the Milwaukee, Lake Shore & Western Railroad. It was enlarged to a length of 793 feet and a width of 400 feet in 1893, and has a storage capacity of 147,000 tons. It is now owned by the Chicago & Northwestern Railroad and leased to the C. Reiss Coal Co.

24. The Reiss coal dock No. 2, served by the West Channel, was built in 1912 by the Pittsburgh & Ashland Coal Co. and was sold to the C. Reiss Coal Co. in 1939. It has a length of 1,070 feet, a width of 323 feet, and a storage capacity of 240,000 tons.

25. The Clarkson coal dock at the foot of Whittlesey Avenue, served by the East Basin, was originally a group of lumber wharves which date back to 1872, when they were built by the Ashland Lumber Co. In 1908 the Clarkson Coal Co. took them over and converted them into a coal dock. It was improved and enlarged in 1916 to a length of 900 feet, a width of 225 feet, and a storage capacity of 100,000 tons.

26. The public wharf, sometimes called the commercial wharf, at the foot of Ellis Avenue, is served by the West Channel. It was built in 1873 by the Wisconsin Central Railroad and is now owned by the Minneapolis, St. Paul & Sault Ste. Marie Railroad Co. It is used mainly by the Nawaygo Tug Line, but is open to the public.

27. The city dock, at the foot of Sixth Avenue West, served by the West Channel, is municipally owned and is a small-craft mooring pier. It is open to all on equal terms.

28. Pulpwood when it arrives is held in areas of the harbor near the Marathon Paper Mill and the public wharf until loaded on railroad cars.

29. No additional docks or wharves are needed for present or indicated commerce. The city owns 4,150 feet of water front, exclusive of street ends, for future public needs.

IMPROVEMENTS DESIRED

30. No hearing was held at Ashland, but the mayor, the dock and harbor board, the chamber of commerce, local businessmen, and the Lake Carriers' Association were contacted by letter and in person to determine the improvements desired for the harbor. Copies of these letters¹ accompany the report. Local interests are almost unanimous in requesting:

(1) That the 400-foot portion of the West Channel be enlarged to form an irregularly shaped basin 21 feet deep with a maximum length of 4,000 feet, and a maximum width of 2,000 feet, as shown on map No. 1;

(2) That the shoal to the northeast of the East Basin be removed.

31. The Lake Carriers' Association submitted a plan which was a modification of the request of local interests and was "suggested as a minimum in case the more commodious approach recommended by

¹ Not printed.

the city of Ashland should not be found justified." Their proposal, shown as ABC on the accompanying map No. 1, calls for an irregular widening of the existing channel.

32. Local interests made no attempt to justify the proposed improvements on the grounds of increased commerce, but stated that they believe the large commerce of the harbor justifies them because of greater safety and convenience to navigation. They state that the narrow West Channel has caused considerable difficulty and costly delays to vessels as well as direct expense by groundings which have occurred as boats make the turn into Reiss coal dock No. 2.

33. The shoal in the eastern part of the harbor, which has a minimum depth of 3 feet below low water datum, has caused the grounding of one pulpwood raft this year and numerous small craft. Local interests feel strongly that this shoal should be removed.

34. In addition to the above recommendations, certain interests feel that the East Basin should be extended eastward with a depth of 25 feet to include that part of the harbor directly in front of the Marathon Paper Co. wharf. No local cooperation has been offered.

COMMERCE

35. The following table shows the commerce of the harbor:

Statement of annual commerce of Ashland Harbor, Wis., 1920-39

[In tons of 2,000 pounds]

Calendar year	Receipts	Shipments	Total	Valuation
1920.....	697,460	9,167,782	9,865,242	\$47,333,744
1921.....	662,472	2,540,779	3,203,251	13,934,184
1922.....	551,007	6,515,577	7,066,584	27,142,868
1923.....	780,278	6,994,478	7,783,756	34,619,405
1924.....	760,333	5,398,660	6,158,993	24,207,543
1925.....	749,410	7,468,142	8,215,552	27,970,696
1926.....	759,756	7,998,035	8,757,791	29,259,440
1927.....	833,079	7,088,863	7,921,942	25,599,230
1928.....	734,136	7,258,897	7,993,033	25,841,376
1929.....	856,234	8,535,400	9,391,634	29,993,207
1930.....	786,007	8,654,937	9,440,944	21,103,632
1931.....	589,522	3,258,661	3,848,183	13,052,848
1932.....	408,602	756,478	1,165,078	4,089,083
1933.....	429,271	2,688,861	3,118,132	10,855,851
1934.....	474,141	2,561,178	3,035,319	11,024,363
1935.....	399,477	3,437,153	3,836,630	18,400,385
1936.....	545,901	5,178,451	5,724,352	19,638,368
1937.....	678,262	6,328,653	7,006,915	28,871,459
1938.....	541,664	2,529,132	3,070,796	12,240,012
1939.....	479,314	5,924,558	6,404,372	(1)

¹ Not available.

Classified statement of commerce, 1939

[In tons of 2,000 pounds]

Commodity	Domestic		Foreign	
	Receipts	Shipments	Receipts	Shipments
Wood and paper products.....			66,224	
Nonmetallic minerals:				
Coal.....	375,999			
All others.....	4,471			
Ores, metals, and manufactures of: Iron ores.....		5,702,037		222,501
Unclassified.....	1,120			

36. Including foreign commerce, 5,925,000 tons of iron ore were shipped from Ashland in 1939 and that amount will be considerably increased in 1940. Since the Gogebic range has a large estimated reserve, shipments should continue at a high rate for many years. The coal receipts in 1939 were about 376,000 tons. The coal trade is well established and bids fair to continue at this or an increasing tempo for a long time. Pulpwood receipts, which started in 1920, were approximately 98,000 tons in 1939 and are estimated at 130,000 tons in 1940. As a result of a new Canadian law, there is a possibility that the Marathon Paper Mills will build a new factory at Ashland to receive from Canada and process 150 to 200 tons of sulphite per day.

37. As far as can be seen now, the improvements suggested by the local interests will not produce any appreciable increase in the commerce of the harbor, but rather will facilitate the movement of the existing commerce.

38. In common with the other harbors on Lake Superior, Ashland has had a marked increase in small recreational boats during recent years.

VESSEL TRAFFIC

39. The harbor at Ashland is used by lake freighters handling coal and ore, by numerous small craft, by two steam tugs handling pulpwood rafts, and occasionally by the Coast Guard, package freighters, and other miscellaneous boats, as indicated in the following tables:

Average yearly traffic for the 10-year period 1930-39, commercial vessels

Draft	In-bound					Out-bound				
	Steamers	Motor vessels	Un-rigged	Yearly average total	10-year total	Steamers	Motor vessels	Un-rigged	Yearly average total	10-year total
20 to 22 feet.....	1			1	11	103			103	1,034
18 to 20 feet.....	40			40	401	171	2		173	1,732
16 to 18 feet.....	140	2		142	1,420	97			97	974
14 to 16 feet.....	213			213	2,125	22			22	218
12 to 14 feet.....	4			4	45	5		1	6	54
Under 12 feet.....	1		1	2	23	1			1	14
Average yearly total.....	399	2	1	402	-----	399	2	1	402	-----
10-year total.....	3,987	24	14	-----	4,025	3,988	24	14	-----	4,026

Recreational craft for the year 1939¹

Draft	In-bound *			Out-bound *		
	Motor vessels	Sailing	Total	Motor vessels	Sailing	Total
10 to 12 feet.....	10		10	10		10
4 to 8 feet.....	29	1	30	29	1	30
2 to 4 feet.....	472		472	473		473
Less than 2 feet.....	65		65	65		65
Total.....	576	1	577	577	1	578
Passengers, excursion ²	3,004	4	3,008	3,000	4	3,010

All data based upon an approximate 66-percent return of questionnaires sent to owners. Outboard motored craft have been excluded.

² Includes the trips made by 26 recreational boating and recreational fishing craft of the inboard motor type permanently based at this harbor.

¹ Partly estimated and includes crew.

DIFFICULTIES ATTENDING NAVIGATION

40. Navigation difficulties are experienced by the coal freighters in the West Channel, and by pulpwood tugs and local small craft at the east of the East Basin.

41. The difficulties in the West Channel occur near Reiss coal dock No. 2, where freighters carrying coal occasionally run aground while making the turn into the narrow slip leading to the dock. Since August 1, 1939, five of these groundings have been reported, as shown on map No. 2.¹ The vessels were aground a total of more than 75 hours. One reported a damage of \$6,364 and another, a broken propeller.

42. Under certain wind conditions it is stated that vessels are sometimes forced to wait for several hours before making the turn into this slip. In addition, several boats have been weather-bound in the slip, but this, of course, is not due to deficiencies in the West Channel, as coal freighters when light have sufficient water to go directly from the dock into the bay without using the channel.

43. Small boat owners and the Marathon Paper Mills representative have had their boats and log rafts go aground several times on the shoal near the East Basin.

SURVEY

44. This report is based upon a survey made during the winter of 1939-40.

PLAN OF IMPROVEMENT

45. *Modification of West Channel—(a) Alternate A.*—The improvement to the West Channel proposed by the majority of local interests consists in adding to the channel the large area shown on map No. 1. To dredge this area to 21 feet with a 1-foot overdepth would require the removal of 648,000 cubic yards of material, a mixture of sand and clay. This could be done for an estimated cost of \$200,000.

(b) *Alternate B.*—The proposal of the Lake Carriers' Association, which was suggested for consideration in case the above could not be adopted, consists in revising the existing project for the West Channel by adding to it the area ABC shown on map No. 1. The estimated quantity of dredging to a 21-foot depth plus 1 foot overdepth is 67,000 cubic yards. The material, a mixture of sand and clay, could be removed for an estimated cost of \$24,000.

46. *Removal of shoal east of East Basin.*—This consists in extending the East Basin eastward to a depth of 10 feet to include the area FGHI shown on map No. 1. This would remove the shoal east of the basin. The estimated quantity of dredging required, allowing for 1 foot overdepth, is 90,000 cubic yards. The material, a finely compacted sand, could be dredged for an estimated cost of \$32,000.

47. All of these estimates are based upon the work being done by dipper dredge, due to the distance to suitable dumping grounds.

48. It is believed that the present approved estimate for annual maintenance, \$19,000, will be adequate to cover all maintenance work in the harbor under any of the proposed revisions.

¹ Not printed.

AIDS TO NAVIGATION

49. The commander of the United States Coast Guard for Lake Superior has been contacted and states that "the completion of any one or combination of projects proposed will involve minor changes in location and the possible establishment of a few additional aids to navigation at a nominal cost."

ANNUAL ECONOMIC COST

50. The estimated annual economic cost for each of the suggested improvements is given in the following table:

Item	Modification of West Channel		Shoal removal (10 feet)
	Alternate A (local suggestion)	Alternate B (Lake Carriers' Association)	
(a) Federal first cost and investment.....	\$200,000	\$24,000	\$32,000
(b) Non-Federal first cost and investment.....	0	0	0
(c) Federal annual carrying charges:			
(1) Interest (3 percent).....	6,000	720	960
(2) Amortization (50 years at 3 percent).....	1,773	213	284
(3) Increased maintenance.....	0	0	0
(4) Total Federal annual carrying charge.....	7,773	933	1,244
(d) Non-Federal annual carrying charge.....	0	0	0
(e) Total annual carrying charges.....	7,773	933	1,244

51. Against these annual sums no corresponding figures representing tangible economic benefits can be set up. Improvement on the basis of safety and convenience of established navigation will be considered in the following discussion:

DISCUSSION

52. The Reiss Coal Co., the principal user of the West Channel, has handled an average of more than 166,000 tons of coal at its dock there during the past 10 years. The groundings which have occurred to vessels entering and leaving the slip alongside this dock since August 1, 1939, lead to the conclusion that the Government channel is inadequate. These groundings have for the most part occurred while the stern of the vessel was still in the Government channel, and it is believed that if the channel were widened the number of groundings near the entrance to the slip would be reduced to a minimum. Since the record of groundings is incomplete, the average value of the benefits which would accrue from the alleviation of this hazard has not been calculated. However, during the period August 1, 1939, to August 1, 1940, the 75 hours lost due to groundings, figured at an average lay rate of \$50 per hour, cost \$3,750. This figure, which is considerably in excess of the computed annual economic cost for alternate B, does not take into account the damage to vessels nor the time spent prior to entering the slip while waiting for favorable weather.

53. Either plan for the improvement of the West Channel would, it is believed, minimize groundings near the harbor line in that area. Alternate A is believed to involve an excessive cost, as no trouble has been reported by vessels in the West Channel at places other than near the west end of its 4,000-foot section. Vessels seem to have had no trouble in negotiating the bend in this channel near point A on map No. 1.

54. Alternate B should result in a satisfactory solution to the existing trouble. It gives more room where boats swing into the Reiss No. 2 dock, which is where it is most needed, and costs but one-eighth as much as alternate A. On this account it is believed to be the more desirable.

55. The East Basin was dredged in 1931 and 1932 and deepened in 1935 and 1936. This work was done under contract by hydraulic dredging. At that time the obstruction to navigation of the adjoining shoal area was not foreseen. However, a least depth of 17 feet exists eastward between the shoal and the breakwater over about 3,700 feet, of 15 feet southward to the harbor line over about 2,000 feet, and of 21 feet or more to the north and west. This is ample maneuver space for the pulpwood rafts to avoid the existing shoal. Such being the case, the placing of proper aids to navigation should eliminate groundings on this shoal. The Coast Guard will be asked to install these aids to navigation and, therefore, no dredging is recommended.

56. As for the suggestion of certain local interests that the East Basin be extended at the 25-foot depth to include the harbor in front of the Marathon Paper Mills wharf, there is at the present time no need for such an extension. No large boats use this area and the prospect of such traffic developing is not promising enough for expenditures by the Government in the area now. It should be noted that a 20-foot depth, ample for all existing traffic, is now available up to the harbor line opposite the paper company's wharf.

CONCLUSIONS

57. The existing project does not fully meet the needs of present commerce and should be extended. The cost of the extension is considered justified by increased safety and convenience to the already well-established commerce.

RECOMMENDATIONS

58. It is recommended that the existing project for Ashland Harbor, Wis., be modified to provide for widening the 400-foot portion of the West Channel to a width of 750 feet, and deepening the widened portion to 21 feet; all as shown on the accompanying map and at an estimated first cost of \$24,000, with no increase in cost of annual maintenance in addition to that now required.

X. H. PRICE,
*Lieutenant Colonel, Corps of Engineers,
District Engineer.*

ASHLAND HARBOR, WIS.

[First endorsement]

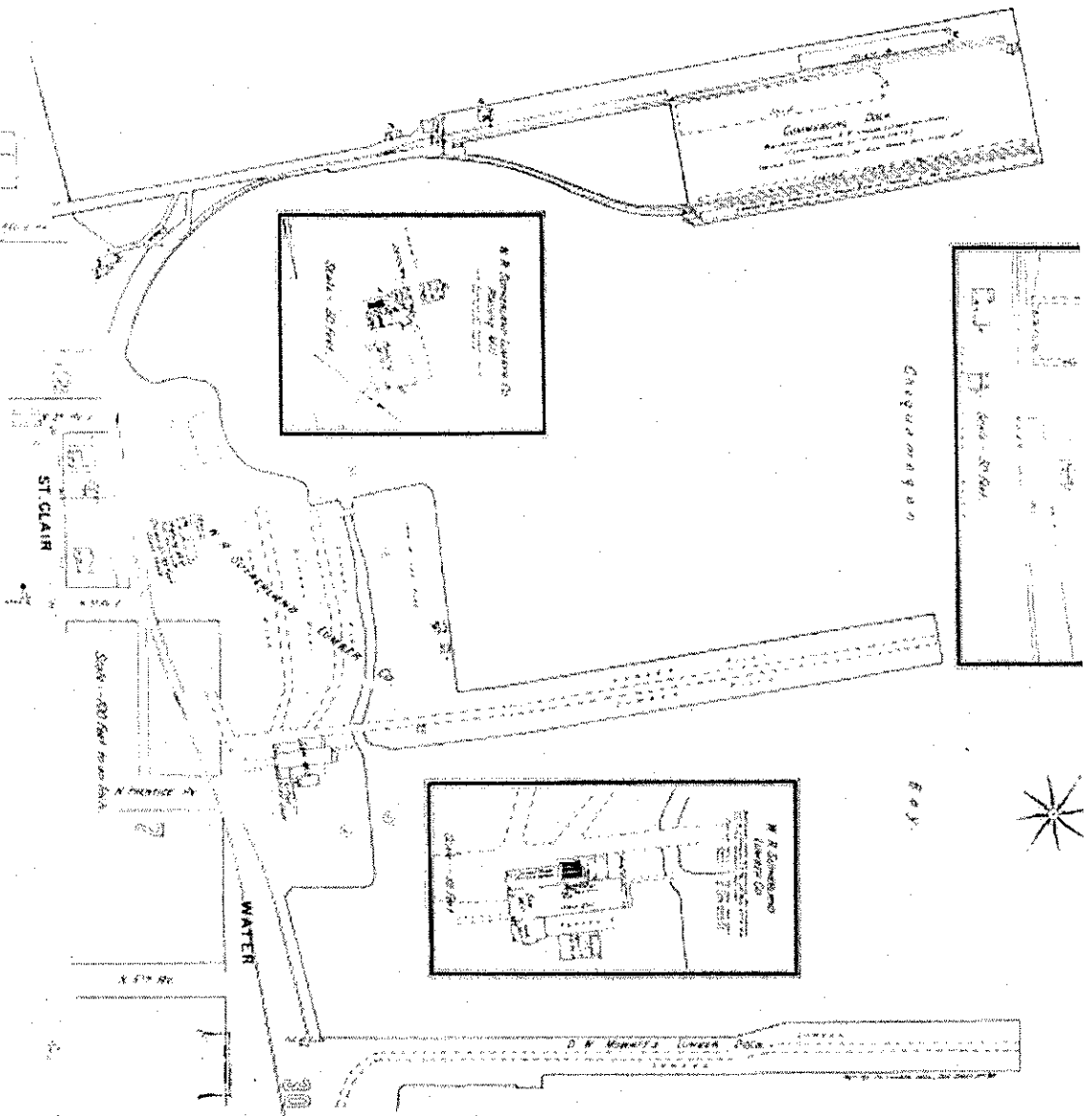
OFFICE, DIVISION ENGINEER,
GREAT LAKES DIVISION,
Cleveland, Ohio, February 13, 1941.

To THE CHIEF OF ENGINEERS, UNITED STATES ARMY.

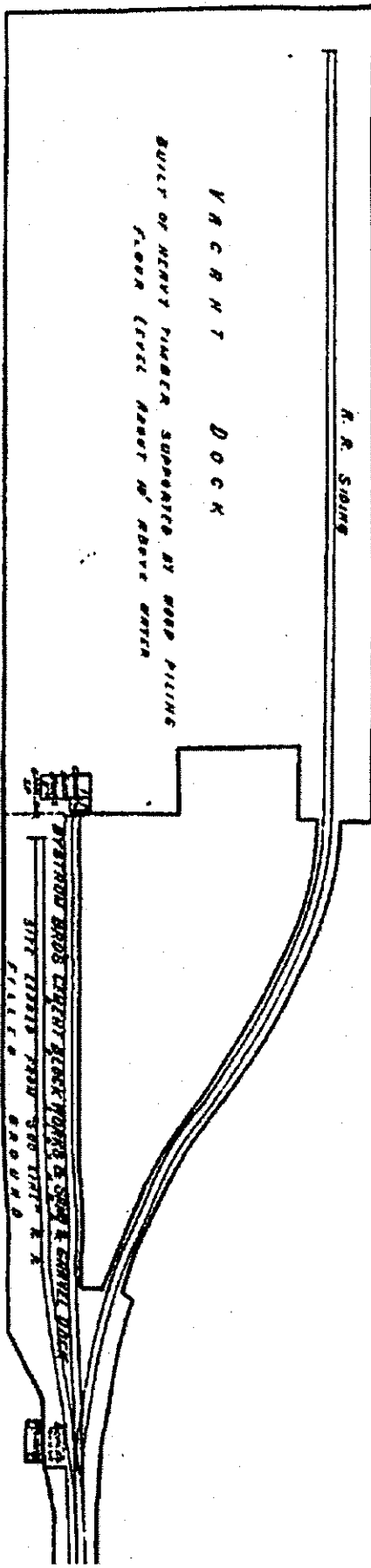
In favour in the recommendation of the district engineer.

U. S. GRANT, 3D,
*Brigadier General, Army of the United States,
Division Engineer.*

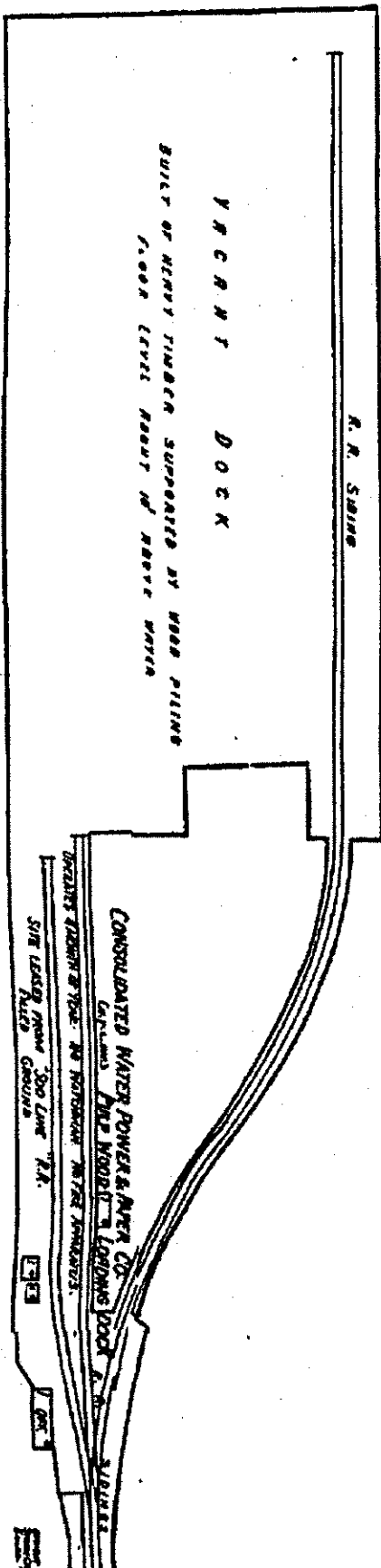
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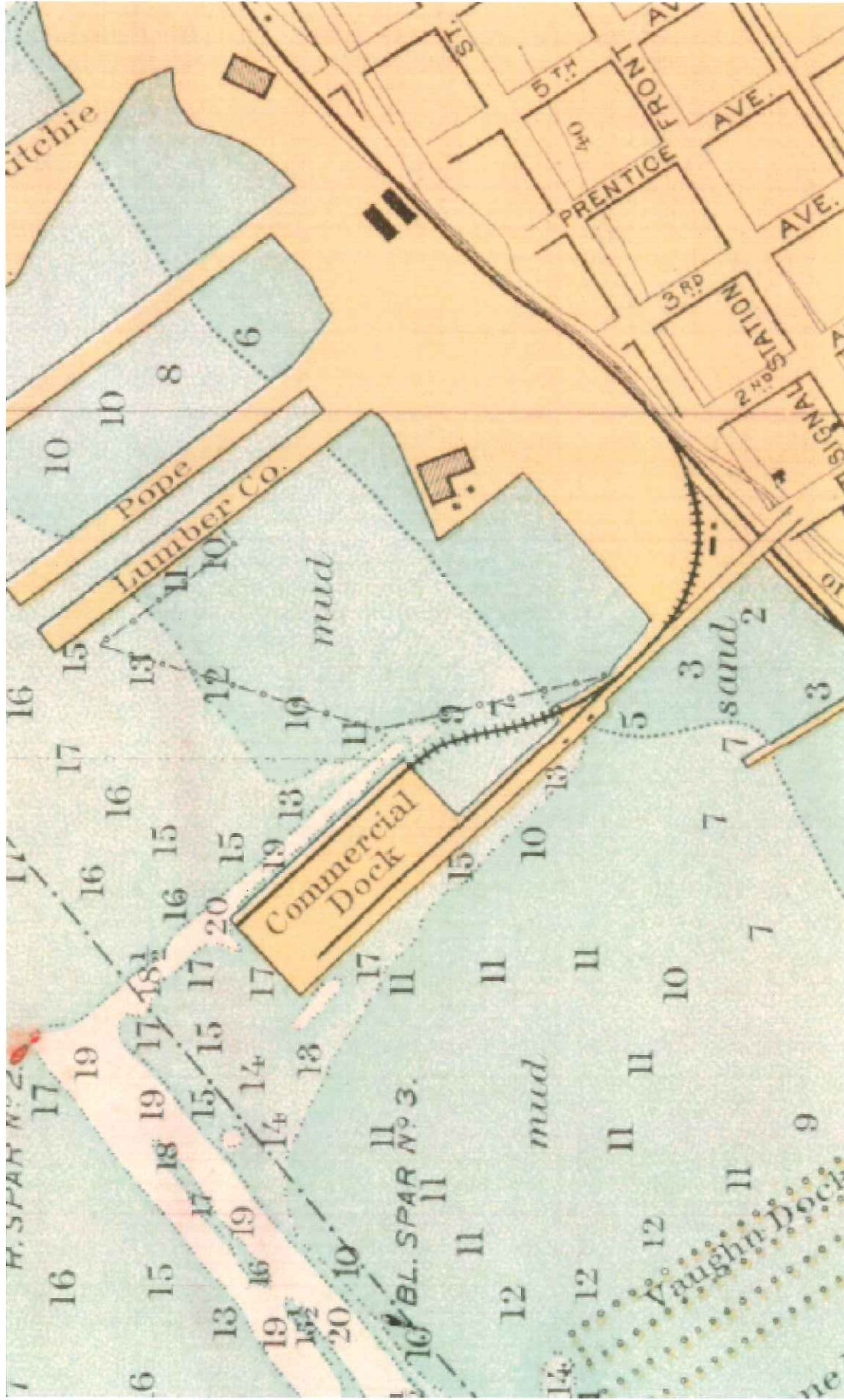
"Commercial Dock. Wisconsin Central R.R. Owner (lessee not known)"
 Source: 1895 Sanborn Map.



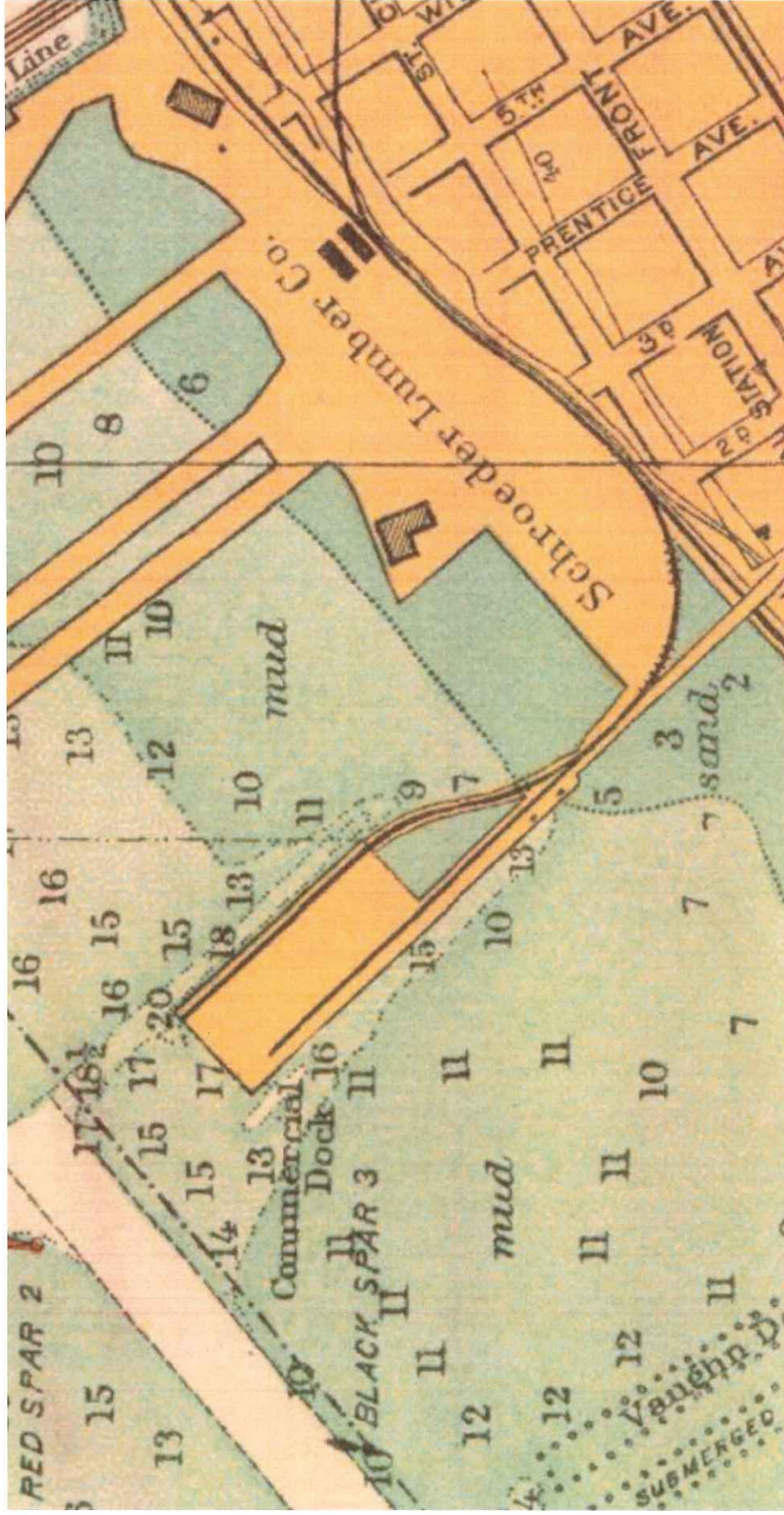
"Bystrom Bros Cement Block Works & Sand & Gravel Dock, Site Leased From "Soo Line" R.R. Filled Ground"
Source: 1923 Sanborn Map.



"Consolidated Water Power & Paper Co., Pulp Wood Loading Dock... Site Leased From "Soo Line" R.R. Filled Ground"
Source: 1946 Sanborn Map.



Source: 1909 War Department Corps of Engineers. Map of Ashland and Washburn Harbors.



Source: 1923 War Department Corps of Engineers. Map of Ashland and Washburn Harbors.

John Schroeder Lumber Company

MANUFACTURERS OF

LUMBER, LATH AND SHINGLES

GENERAL OFFICE, YARDS AND PLANING MILLS:
MILWAUKEE, WIS.

SAW MILLS:
FOOT OF PRENTICE AVENUE, ASHLAND, WIS.
F. M. CLARK, MANAGER.

ASHLAND, WIS., Jan 8th 1917

SOLD TO Geo Ry Co

OUR ORDER NO. Manneapolis Minn

YOUR ORDER NO. H. W. Jones

CARGO OR CAR Ashland TERMS: 30 DAYS NET ACCEPTANCE, OR 2 PER CENT. OFF FOR CASH IF PAID IN 10 DAYS FROM DATE OF SHIPMENT.

DATE

FEET

PRICE

200 1x6 #2 Hemlock, Lgh 21 420

Del. - Construction Dept. Geo Ry Co

Charge to construction of temporary
run-off, timber approach, Ashland Concrete
Bldg. Co. H. W. Jones 1-18-17

VO OE-78
Jan 23, 1917

HENRY H. SCHROEDER, President

WILLIAM A. SCHROEDER, Vice-President

FREDERICK J. SCHROEDER, Sec. & Treas.

John Schroeder Lumber Company

MANUFACTURERS OF

LUMBER, LATH AND SHINGLES

GENERAL OFFICE, YARDS AND PLANING MILLS:
MILWAUKEE, WIS.

SAW MILLS:
FOOT OF PRENTICE AVENUE, ASHLAND, WIS.
F. M. CLARK, MANAGER

ASHLAND, WIS., Jan 13th 1917

SOLD TO Loe Ry Co

OUR ORDER NO. _____

YOUR ORDER NO. H. W. Jones

Minneapolis, Minn

CARGO OR CAR _____

TERMS: 30 DAYS NET, ACCEPTANCE, OR 2 PER CENT. OFF FOR
CASH IF PAID IN 10 DAYS FROM DATE OF SHIPMENT.

DATE

FEET

PRICE

432 18 Dec 3/2-12' Hemlock, Rgh 23 994

Via own team

Charge to Construction of Temporary
Run-off, Timber Approach, Ashland Con-
crete Ore Deck. OTC H. W. Jones 1-18-17

John Schroeder Lumber Company

MANUFACTURERS OF

LUMBER, LATH AND SHINGLES

GENERAL OFFICE, YARDS AND PLANING MILLS:
MILWAUKEE, WIS.

SAW MILLS:
FOOT OF PRENTICE AVENUE, ASHLAND, WIS.
F. M. CLARK, MANAGER.

LOGGING HEADQUARTERS:
SCHROEDER, (COOK COUNTY), MINN
ON NORTH SHORE LAKE SUPERIOR

ASHLAND, WIS.,

AUG-27-1917

TO
Soo Railway Co.,
Ashland, Wis.

Doek

TERMS: Cash.

DEBIT MEMORANDUM NO. 2267

DATE	FEET	PRICE
------	------	-------

Timbers Resawed as directed

Own Delivery.

5.50

SEP 8 1917

R. Lundberg

RECEIVED
Soo Line Co. Office

AUG 29 1917

ASHLAND, WIS.

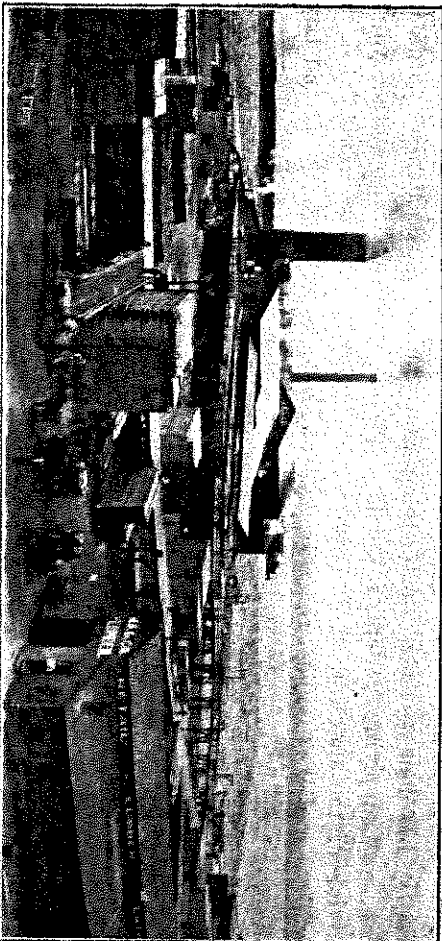
H.W. Jones called the Amby phone
and wanted to know if he could
buy 100 - 14 ft ties from Shroeder Rbr Co
or take the ties from the ones on
hand for the Double Crossroad.

He says it is impossible to use the 12 ft
ties. He wants you to call him if possible.

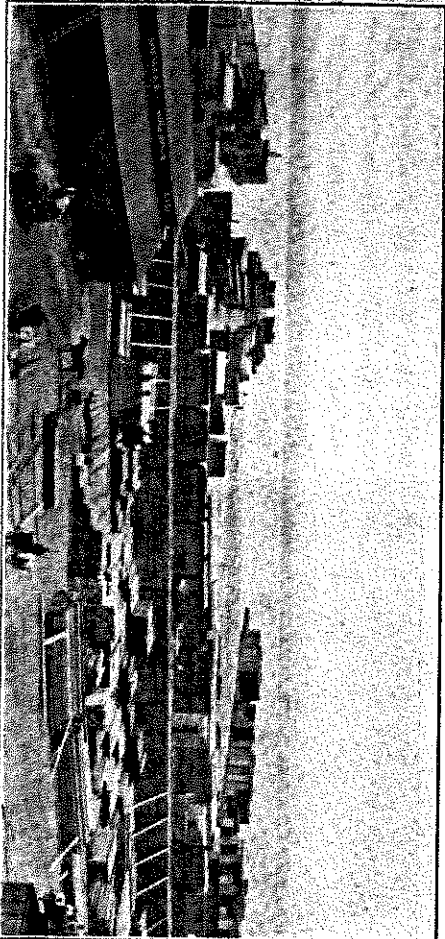
8x8-?

JAm 2/10/17

See if we can buy locally +

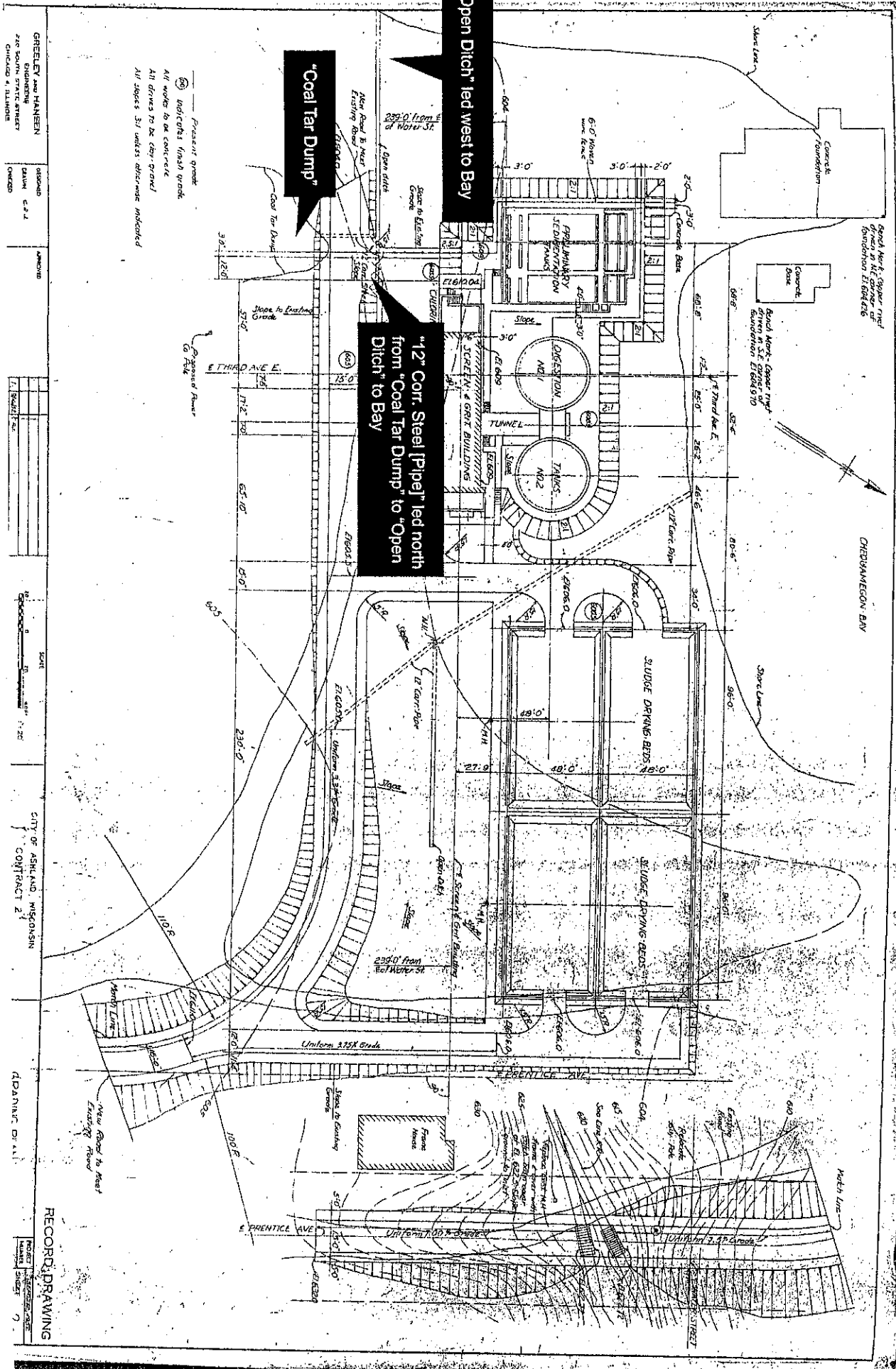


West Portion Schroeder Lumber Co.'s Ashland Plant.



Part of East Portion of Schroeder Lumber Co.'s Ashland Plant.

Source: *Ashland's Thriving Lumber Concern*, published November 1913 in *The Municipality*, pp. 536-537.

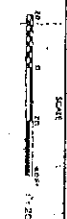


GREELY and HANSEN
ENGINEERS
210 SOUTH DEARBORN STREET
CHICAGO 4, ILLINOIS

DESIGNED
DRAWN
CHECKED
DATE
C.S.T.

APPROVED

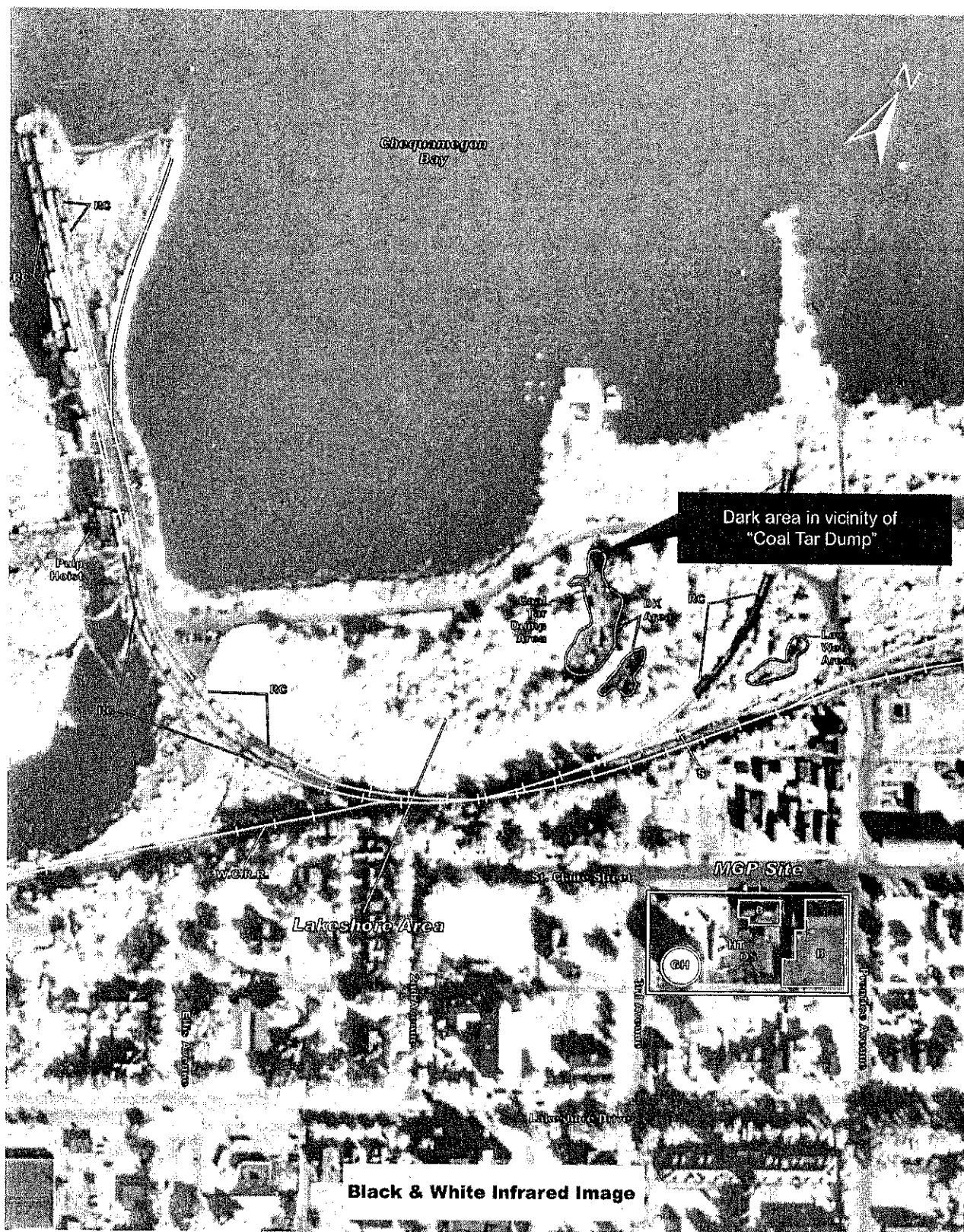
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CITY OF ASHLAND, WISCONSIN
CONTRACT 21

DESIGNED BY
DRAWN BY
CHECKED BY
DATE

RECORD DRAWING
PROJECT NO.
SHEET NO.



Ashland/ NSP Lakefront Superfund Site
Ashland, Wisconsin

August 4, 1951
Source: NARA

Approx. Scale: 1"=152'



Ashland/ NSP Lakefront Superfund Site
Ashland, Wisconsin

May 10, 1966
Source: FSA

Approx. Scale: 1"=152'

OFFICE OF REGIONAL
COUNCIL